80-1154

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1980

ART HAYWARD, JR., MICHAEL MCNABB and MORRIS L. BROWN,

Petitioners,

vs.

RAYMOND K. PROCUNIER, JIRO J. ENOMOTO, WALTER BRITT, ROBERT M. REES, L. H. FUDGE, C. L. SWAGERTY, D. W. SMITH and DON R. WEBER,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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QUESTION PRESENTED

When prison administrators impose a five month lockdown, consisting of 22 to 24 hour per day confinement of prisoners to their cells, with attendant restrictions upon their usual activities and routines, and when the imposition and continuation of that lockdown is conditioned by state law, rules, and practice upon the onset and continuation of a specific factual predicate, to wit: a state of emergency, does the Fourteenth Amendment to the United States Constitution require that some form of procedural due process be afforded to the prisoners affected.

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IN THE SUPREME COURT
OF THE
UNITED STATES

October Term, 1980

No.

ART HAYWARD, JR., MICHAEL McNABB
and MORRIS L. BROWN, Petitioners,

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RAYMOND K. PROCUNIER, JIRO J.
ENOMOTO, WALTER BRITT, ROBERT M.
REES, L. H. FUDGE, C. L.
SWAGERTY, D. W. SMITH and
DON R. WEBER, Respondents.

PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals

for the Ninth Circuit

Art Hayward, Jr., Michael McNabb, Morris L. Brown, and the class which they have been certified to represent (hereinafter "the prisoners") petition for a writ of certiorari to review the opinion and judgment of the United

States Court of Appeals for the Ninth Circuit, entered in this case on October 3, 1980.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is attached hereto as Appendix A and is reported at 629 F.2d 599. The trial court order, adopting, as modified therein, the Findings of Fact and Conclusions of Law of the United States Magistrate before whom the case was tried is attached hereto as Appendix B. The Findings of Fact and Conclusions of Law of the United States Magistrate before whom the action was tried is attached hereto as Appendix C. Neither Appendix B or C has been reported.

JURISDICTION

Judgment of the United States Court of Appeals for the Ninth Circuit in this case was entered on October 3, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the

United States Constitution provides in pertinent part:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

STATEMENT OF THE CASE

A. The 1974-75 Lockdown at San Quentin State Prison

On December 19, 1974, following several incidents of violence at San Quentin State Prison in Tamal, California, prison authorities imposed what is commonly known as a "lockdown" or "deadlock" on the prison. At the beginning of the lockdown the prisoners were confined to their cells 24 hours a day and were served sack lunches twice a day in their cells. Gradually this regimen was relaxed. Within two to three weeks following imposition of the lockdown the prisoners began receiving one hot meal per day out of their cells. Some two weeks thereafter they began to receive two hot meals per day out of their cells and it was not until June

1975, six months after the lockdown began that the normal routine of three hot meals a day was restored.

Similarly, yard exercise and showers were abrogated entirely at the outset of the lockdown but were gradually reintroduced on a restricted basis. Finally, a great many inmate privileges such as school attendance, movies, and visiting rights were either abrogated entirely or substantially curtailed. As late as May of 1975, five months after the imposition of the lockdown, prisoners were spending approximately 22 hours per day confined to their cells, making this lockdown one of the longest and most restrictive in San Quentin history.

The authority for imposing this lockdown was found in Section 4402 of the California Rules and Regulations of the Director of Corrections and the emergency disturbance control plan promulgated pursuant thereto.* Under both the plan and San Quentin's practice, lockdowns were imposed only in an

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* These rules have been promulgated pursuant to the express statutory authorization contained in California Penal Code Section 5058.

emergency situation and only for the duration of the emergency. The plan and normal practice at San Quentin called for efforts to isolate the disturbance and to ameliorate conditions to normal operations as soon as the emergency subsided.

It was undisputed below that neither prior to* during or at any time following the imposition of the lockdown and during its five month continuance was a hearing or any other systematic fact finding procedure conducted to test the necessity for continuation of this lockdown.

B. The Proceedings Below

Following the conclusion of the lockdown the prisoners initiated this action in the United States District Court for the Northern District of California, on behalf of themselves and on

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* Prisoners made no claim below that, under the circumstances of this case, procedural due process should have preceded the imposition of the emergency measures; rather prisoners contended that at some point following the imposition of the lockdown and while its extraordinary effects continued, some procedural due process protections were required.

behalf of a class consisting of all of the residents of the East Cell Block of San Quentin State Prison, wherein they were housed during relevant periods of this lockdown. The prisoners made two principal claims under 28 U.S.C. Section 1983 arising out of this lockdown: first, that their right to procedural due process pursuant to the Fourteenth Amendment to the United States Constitution had been violated, and second, that their right to be free of cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution had been infringed.

The action was subsequently certified as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The case was referred to a United States Magistrate for trial without a jury, and the trial commenced on November 7, 1977. The Magistrate entered his Findings of Fact and Conclusions of Law on February 2, 1978, denying the prisoners' claims in their entirety. The magistrate concluded that the procedural due process clause of the Fourteenth Amendment of the United

States Constitution was inapplicable to the lockdown and that no denial of the right to be free from cruel and unusual punishment had been demonstrated by the prisoners. See Appendix C hereto. By Order dated October 16, 1978 the United States District Court to whom the case was assigned approved the Magistrate's Findings of Fact and Conclusions of Law with a minor amendment and entered judgment thereon. See Appendix B hereto.

A timely appeal was filed to the United States Court of Appeal for the Ninth Circuit, and that court, by judgment dated and entered on October 3, 198 , affirmed the judgment of the United States District Court. With respect to the procedural due process claim the court held "that there is no due process right to the hearing sought by plaintiffs in this case. In so deciding we do not minimize the seriousness of a lockdown nor do we deny that administrative review of a lockdown decision might be desirable. . . . We are simply unable to say that the Constitution dictates such a procedure." See Appendix A at p. 8.

With respect to the Eighth Amend-

ment claim the court held that "these decisions [the lockdown decisions] are delicate ones and those charged with them must be given reasonable leeway. . . . The court below carefully reviewed the restrictions of the lockdown in light of the emergency at the prison and determined that they did not cross the Eighth Amendment line. We agree with that conclusion." Id. at p. 9.

REASONS FOR GRANTING THE WRIT

A. The Lower Court Misapplied Procedural Due Process Precedents As They Apply To An Important Area Of Conditions Of Prison Confinement

This case presents a question never addressed by this Court concerning an important and recurring area of prison regulation of the conditions of confinement of inmates. At the outset we emphasize the urgency of dealing with the general problem of conditions of confinement of prisoners, a concern which was underscored by the tragedy at the New Mexico State Penitentiary during 1979, and which has been forcefully

singled out for special attention by the Chief Justice of this Court in his year end report on the judiciary. See e.g., The New York Times, December 29, 1980 at p. 11.

The utilization of lockdowns or deadlocks is common in many prison systems across the United States, as is revealed by the numerous cases involving this situation in various circuits. See cases discussed in Section B infra. Thus the question presented here is of national importance and application. As noted above, the prisoners challenged the five month San Quentin 1974-1975 lockdown on two principal grounds: that it was continued without procedural due process, and that it violated plaintiffs' rights to be free of cruel and unusual punishment.

Petitioners, while disagreeing with the Court of Appeals' conclusion on the cruel and unusual punishment issue, do not believe that claim, standing alone, warrants review here, because no new and/or generally applicable standards would be derived therefrom. Accordingly, petitioners seek review only of the lower courts disposition of the pro-

cedural due process question which, we submit, both was erroneously decided below, and is of national application in an important area of conditions of prison confinement.

As indicated in the quotation above, the Court of Appeals conceded the serious and substantial nature of the deprivations incident to a five month lockdown and the desirability of some systematic review or fact finding procedure to insure their necessity. Nonetheless it concluded that such a review was not constitutionally compelled by the due process clause and that the only scrutiny to which such a lockdown should be subject is Eighth Amendment scrutiny. As developed below, in relegating scrutiny of a lockdown solely to the bases afforded by the Eighth Amendment, the Court of Appeals both departed from procedural due process precedents of this Court and enunciated a principle which is unsound from a policy viewpoint.

In rejecting the prisoners due process claim, the Ccurt of Appeals decided first, that the prisoners' expectation to be free of the deprivations

incident to a lockdown was too "emphemeral" to trigger procedural due process protection under the tests enunciated in Meachum v. Fano 427 U.S. 215 (1976) and its progency, and second, that even if such expectations were not deemed "emphemeral", no workable process could be fashioned here because the deprivations were visited upon a prison as a whole rather upon one prisoner. Neither of these contentions, we submit, is persuasive.

First, the record below established that prisoners had an expectation that, absent a state of emergency they would not be subjected to the magnitude of deprivations incident to a lockdown. As the Court of Appeals conceded, this expectation was grounded both in the rules of the California Department of Corrections and the actual California practice in imposing lockdowns. See Appendix A at p. 5. Accordingly, under the principles enunciated by this Court, that expectation even if "ephemeral" (which prisoners dispute) was entitled to some (even if limited) measure of due process protection. See Greenholtz v. Inmates of Nebraska Penal and Correc-

tional Complex, 442 U.S. 1 (1979) at 12.

With respect to the second basis for the court's due process holding, the prisoners do not dispute that the situation of a lockdown is different from other situations which affect only one prisoner, e.g., solitary confinement, loss of good time credits, etc. We submit, however, that this difference affects only the type of process which should be fashioned to deal with a lockdown situation, not the requirement that some systematic factfinding be undertaken. See, Greenholtz, supra at 12-14. In essence, the Court of Appeals' due process analysis disregards the fundamental predicate for procedural due process in the prison context: "if substantial deprivations are to be visited upon a prisoner it is wise that such action should at least be premised upon the facts rationally determined." Sostre v. McGinnis, 442 F.2d 178 at 198 (2nd Cir. 1971). As this Court has succinctly stated in Greenholtz, supra, "the function of due process as that concept is embodied in the constitution and in the realm of factfinding, is to minimize the risk of erroneous

decisions. Because of the broad spectrum of concerns to which the term must apply, flexibility is necessary to gear the process to the particular needs; the quantimum quality of process due in a particular situation depends on the need to serve the purpose of minimizing the risk of error." See Greenholtz, supra at p. 13.

The Court of Appeals decision completely ignores this flexibility. Thus the decision to lockdown a prison and to continue that lockdown, while considerably different in character from some other prison decisions affecting individual inmates only, nonetheless visits equally serious consequences upon the prisoners involved, and the need to minimize the risk of erroneous decisions is therefore equally great. Accordingly, individualized adversary hearings of the type which attend individual deprivations would clearly be inappropriate in lockdown situations. That fact, however, simply does not vitiate the need for some systematic factfinding review by a prison administrator not personally responsible for the lockdown decision, tailored to test the factual

predicate for an extended lockdown.

In addition to being unsupported by precedent, we submit that the Court of Appeals decision to relegate scrutiny of an extended lockdown solely to the Eighth Amendment is unsound on a policy basis. Thus, as the Court of Appeals observed in its Eighth Amendment analysis, those charged with "lockdown decisions must be given reasonable leeway". See Appendix A at p. 9. This is a proposition with which we do not quarrel, since prison administrators clearly possess expertise not possessed by reviewing federal courts. We submit, however, that, concomitant to the leeway accorded under the Eighth Amendment, is a procedural due process obligation upon the prison officials to insure that in exercising that leeway they are acting upon facts rationally determined. The instant lockdown, we submit, strongly supports imposition of such a procedural due process obligation. Thus, it is clear that the prison administrators who implemented and continued the lockdown for five months believed that a lockdown of that scope and duration was necessary to deal with the emergency presented at

San Quentin in 1974-75. Equally clearly the prisoners involved disagreed, believing that a lockdown of a much shorter duration and lesser scope would have sufficed, a belief supported by the testimony of a prison psychologist, to the effect that lockdowns exceeding one to two weeks in duration do not have a beneficial effect on the stability of the prison but in fact may create the very tensions which breed violence in the first instance.

Under these circumstances we submit that some systematic procedure for weighing the competing contentions, conducted by someone within the prison hierarchy other than the individual making the lockdown decisions is both reasonable and necessary. The Court of Appeals conceded that such process was desirable but concluded that it was not constitutionally mandated. In so concluding, we submit, it failed to apprehend the flexibility of procedural due process.

B. There Is A Significant Disparity Of View Point Among The Circuits On The Question Of The Applicability Of Procedural Due Process To Lockdown Situations

In addition to the importance of the question here presented to prison administration, and its erroneous disposition below, another cogent reason exists for review by this Court. At least four of the circuits, including the Ninth Circuit Court of Appeals in this case, have been presented with lockdown situations and have given quite disparate treatment to the subject. Perhaps the leading case is Labatt v. Twoomey, 513 F.2d 641 (7th Cir. 1975). The court there concluded that in a lockdown of sufficient duration, a hearing or other procedural protection must afford the prisoners either prior to, or if conditions prevent, sometime after the lockdown is initiated and while its extraordinary effects continue. The court found, however, that the nine day lockdown there involved did not implicate such procedures. Id. at 646. Similarly, the First Circuit, in Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974),

indicated that while a lockdown of several weeks did not implicate the procedural due process protections of the Fourteenth Amendment, a lockdown of longer duration would require some due process. Id. at 600.

In its opinion the Ninth Circuit specifically rejected the reasoning of the Seventh Circuit in Labatt and impliedly rejected the reasoning of the First Circuit in Vitek. In accord with the Ninth Circuit view in this conflict is a case from the Second Circuit, Gilliard v. Oswald, 552 F.2d 456 (2d Cir. 1977), wherein the court indicated that a lockdown does not implicate the procedural due process clause. See also, Johnson v. Anderson, 370 F.Supp. 1373 (D. Delaware 1974), (where the court held that no procedural due process protections need attend the imposition of a lockdown because it was a rule change of general applicability, not one directed to particular individuals, a rationale adopted by the Ninth Circuit in this case.)

Thus, it is apparent that lockdowns are a national phenomenon, and that the question of the applicability of the procedural due process clause to them is

one to which various circuits have applied conflicting analyses. Accordingly, it is a question which should be resolved by this Court.

CONCLUSION

For the reasons set forth above, the petitioners respectfully submit that the writ of certiorari should be granted.

Dated, San Francisco, California, December 31, 1980.

Respectfully submitted,

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(Appendices Follow)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ART HAYWARD, JR., MICHAEL McNABB and MORRIS L. BROWN,

Plaintiffs/Appellants

-v-

RAYMOND K. PROCUNIER, JIRO J. ENOMOTO, WALTER BRITT, ROBERT M. REES, L. H. FUDGE, C. L. SWAGERTY, D. W. SMITH and DON R. WEBER,

Defendants/Appellees.

No. 78-3701

D.C. No. C-75-0653

O P I N I O N

Appeal from the United States District Court for the Northern District of California
William A. Ingram, District Judge, Presiding Argued and Submitted July 9, 1980

BEFORE: DUNIWAY, TANG and CANBY, Circuit Judges

CANBY, Circuit Judge

In this appeal we must decide whether state prisoners' constitutional rights to procedural due process and

freedom from cruel and unusual punishment were violated by a five-month "lockdown"[1] of the prison. The district court held that there was no constitutional violation. We agree and affirm.

FACTS:

Between 1970 and 1974 California's San Quentin Prison became an increasingly turbulent institution. The rate of violent incidents more than tripled during this period, and the influence of prison gangs steadily grew. 1974 was a particularly violent year. There were 82 assaults with weapons and 12 killings, as well as 71 cases of possession of weapons and 2 attempted escapes. Prison officials responded to the problem by temporarily "locking down" the prison several times in 1974; Department of Corrections officials even considered closing San Quentin.

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1. "Lockdown" is not a term of art. It generally refers to a condition of abnormally heightened security during which prisoners are confined to their cells totally or for a much greater portion of the day than usual. As will be seen, the restrictive incidents of the lockdown in this case changed during the period it was in effect.

Appendix A

On December 19, 1974, two men were killed in separate incidents of gang violence. Prison officials feared that the violence might spread. The warden decided that a state of emergency existed and, acting pursuant to § 4402 of the California Rules and Regulations of the Director of Corrections, he imposed a lockdown on the entire prison.

At first the prisoners were confined to their cells 24 hours a day and were served sack lunches twice a day in their cells. Gradually, however, the regimen was relaxed. Within two weeks the prisoners received one hot meal per day in the dining room. Two weeks later they received two hot meals per day and finally in June 1975, six months after the lockdown began, the normal routine of three hot meals per day was restored. Similarly, yard exercise and trips to the showers were forbidden entirely at the outset of the lockdown, but were gradually reintroduced. Showers were fully reintroduced by February 1975. Some yard exercise was permitted within a month after the lockdown began, and the normal exercise routine was restored by May. Of course a great many inmate

privileges such as movies, school attendance and visitation were partially or wholly abrogated during the five to six months of the lockdown.

The plaintiffs in this action were residents of East Block, one of the four major housing units at San Quentin, during the lockdown. They brought this action on behalf of themselves and the class of East Block residents for damages and declaratory and injunctive relief under 42 U.S.C. § 1983. They do not argue that the initial decision to impose the lockdown was necessarily improvident; indeed, the record discloses that many inmates were urging the warden to lockdown the prison after the two killings on December 19, 1974. They do, however, urge that continuance of the lockdown for more than a short time without some sort of notice and hearing at which the inmates could participate deprived them of their liberty without procedural due process, in violation of the fourteenth amendment. The prisoners also argue that the lockdown, continuing as long as it did, constituted cruel and unusual punishment in violation of the eighth and fourteenth amendments. The

district court rejected these claims and the prisoners appealed.

PROCEDURAL DUE PROCESS:

In Meachum v. Fano, 427 U.S. 215 (1976), and Montanye v. Haymes, 427 U.S. 236 (1976), the Supreme Court held that state prisoners had not lost any liberty or property interest, and hence were not entitled to procedural due process, by being transferred to a less favorable prison within the same prison system. Crucial to these decisions was the court's conclusion that the relevant state statutes, regulations and customs did not give rise to any justifiable expectation on the part of prisoners that they would not be transferred for any reason or no reason. Had the state law been to the contrary, it was possible that inmates would have had a liberty interest in not being transferred which could not have been abridged without procedural due process.

The prisoners in this case argue that, unlike the inmates in Meachum and Montanye, they did have a legitimate expectation under California law and prison custom that they would not be

subjected to a lockdown unless a certain specified condition -- the existence of an emergency -- was met. They argue that they were therefore entitled to a hearing before an impartial fact-finder at some point soon after the lockdown was imposed.

We have difficulty finding support for the plaintiffs' contentions in the California prison regulations or practices. Section 4402 of the Rules and Regulations of the Director of Corrections simply provides that "[e]ach institution head must have in effect at all times a plan, approved by the Director, for meeting emergencies, such as riots, strikes, attacks upon inmates, visitors or staff, explosions or fires, suicides or attempted suicides or accidental injuries to inmates or visitors and employees." The variety and inclusiveness of this list suggest that the regulation is not intended to impose fixed conditions upon the warden's exercise of his authority. In any event, it is undisputed that there were "attacks upon inmates" which led the warden to implement the prison's Disturbance Control Plan and impose the lockdown. We do not understand the prisoners to be

seeking a hearing merely to determine whether in fact such attacks took place. They wish a hearing to determine whether the increased level of security represented by the lockdown was justified by the emergency. Yet nothing in the regulations nor, in our view, in the customs of the prison is sufficiently specific to create a justifiable expectation of any particular level of prison-wide security. That omission distinguishes the present case from those in which prisoners were held to be entitled to procedural due process. We do not find here the equivalent of a statute conferring a particular benefit, such as good behavior time or parole, with a specification of conditions under which that benefit can be lost. See Wolff v. McDonnell, 418 U.S. 539 (1974); Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100 (1979). The regulations here do not purport to enumerate specific reasons for which a prisoner can be placed in solitary confinement and to require documentation of those reasons. See Wright v. Enomoto, 462 F.Supp. 397 (N.D. Cal. 1976), aff'd mem., 434 U.S.

1052 (1978). Nor are prisoners being subjected to treatment wholly outside the foreseeable consequences of criminal conviction, such as commitment to a mental institution in the absence of a mental disease or defect. See Vitek v. Jones, ___ U.S. ___, 100 S.Ct. 1254 (1980). Here were have only a regulation requiring a warden to have a plan for meeting emergencies, along with a non-exhaustive list of possible emergencies.

It is certainly true that in the ordinary course of events prisoners expect that there will be no lockdowns in the absence of an emergency, just as in Meachum and Montanye prisoners naturally expected that they would not be transferred in the absence of misconduct, "unless it be assumed that transfers are mindless events". 427 U.S. at 228. But the Supreme Court found that type of expectation to be too ephemeral to give rise to a due process liberty interest, and we think the same conclusion follows in the present case.

There is another fundamental defect in the procedural due process arguments of the prisoners, and it lies in the nature of the hearing they seek. In

every case cited by plaintiffs or revealed by our research in which prisoners were found to be entitled to a due process hearing, the subject of that hearing was the fate of individual prisoners, and the facts to be examined dealt with their conduct or their condition. See, e.g., Wolff v. McDonnell, supra; Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, supra; Wright v. Enomoto, supra. In this case, however, the facts in dispute are not those which would differentiate the plaintiffs from the general prison population and cause them to be subjected to distinctive treatment. The conduct of the plaintiffs is not in issue. Instead, the question to be decided is whther the degree of emergency justifies a continuation of the lockdown -- a determination involving a high degree of policy and prediction. See Gilliard v. Oswald, 552 F.2d 456, 459 (2nd Cir. 1977). To address this question, the plaintiffs urge us to fashion a hearing at which selected members of the inmate population can present their views on the advisability of a lockdown. Both the subject matter and the suggested procedure cause

us to doubt that the Constitution requires any such hearing. See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978); Alaska Airlines, Inc. v. Civil Aeronautics Board, 545 F.2d 194, 200 (D.C. Cir. 1976).

Plaintiffs rely on three cases involving procedural due process and lockdowns. All three were decided before Meachum and Montanye, supra, and in none of them was a due process hearing actually ordered. The case most supportive of plaintiffs is Labatt v. Twoomey, 513 F.2d 641 (7th Cir. 1975). There the Court held that a nine-day lockdown did not implicate due process because it was short and in response to an emergency. The court stated, however, that in some cases of a general lockdown the Constitution would require that the prisoners be given "notice of the cause of the deprivation, the reasons for its continuation, and an opportunity to respond." Id. at 646. The second case, Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974) is more equivocal. The court held that there was no procedural due process violation in a lockdown of several weeks'

duration, but added that in the event of a long and unreasonable lockdown the prisoner could properly seek an injunction, or even damages if "the confinement was being continued in bad faith as a subterfuge for the denial of prisoners' procedural rights." Id. at 600. We do not necessarily read that language as an endorsement of plaintiffs' position but in any event we are not persuaded by it or by the dictum in Labatt that we should interpret the due process clause to require the type of hearing sought by the prisoners in this case. Our position is supported by Gilliard v. Oswald, 552 F.2d 456 (2d. Cir. 1977) in which the court rejected a claimed right to hearing of 140 prisoners administratively confined to their cells because of a prison emergency arising from a series of assaults.

The third lockdown case upon which plaintiffs rely, Johnson v. Anderson, 370 F. Supp. 1373 (D. Del. 1974) is also in accord with our views. There the court held that a lockdown of an entire cell block did not implicate procedural due process because the lockdown decision was "a rule change of general appli-

cability affecting an entire class of prisoners. Since such a rule change is not directed at particular persons, individual prisoners are neither more acutely affected by it than other members of their class nor uniquely able to bring personal knowledge to bear on the appropriateness of its implemenation." Id. at 1382. The same reasoning applies with even greater force to the lockdown of an entire prison.

We therefore hold that there is no due process right to the hearing sought by plaintiffs in this case. In so deciding we do not minimize the seriousness of a lockdown nor do we deny that administrative review of a lockdown decision might be desirable. See McGruder v. Phelps, 608 F.2d 1023 (5th Cir. 1979). We are simply unable to say that the Constitution dictates such a procedure.

EIGHTH AMENDMENT:

Prisoners are not left without any remedy against an unjustifiable or unduly oppressive lockdown. Severe conditions of confinement are subject to eighth amendment scrutiny, which plaintiffs have invoked in this proceeding. They claim

that the lockdown constituted cruel and unusual punishment, and rely primarily on Jefferson v. Southworth, 447 F. Supp. 179 (D. R.I. 1978), aff'd, 616 F.2d 956 (1st Cir. 1980). In that case, however, the district court was faced with a prison administration which was either unable or unwilling to deal with extreme conditions which the court had previously found to be cruel and unusual punishment. Palmigiano v. Garrahy, 443 F. Supp. 956 (D. R.I. 1977), aff'd, 616 F.2d 598 (1st Cir. 1980). The Director of Corrections in Jefferson imposed the lockdown within a few weeks of the district court's decision in Palmigiano and apparently in response to it. There was, the district court found, no emergency necessitating the lockdown and the Director had announced his intention to continue the lockdown indefinitely. Neither the extreme conditions of Palmigiano nor the apparent bad faith of prison authorities in Jefferson v. Southworth find a parallel in our case.

Nor do the conditions imposed during the emergency lockdown at San Quentin fall within our ruling in Spain v. Procunier, 600 F.2d 189 (9th Cir. 1979).

In Spain we affirmed a decision of a district court that confinement of six prisoners with an almost total absence of outdoor exercise was cruel and unusual punishment, and we upheld the court's order requiring at least one hour of such exercise per day, five days per week "unless inclement weather, unsual circumstances, or disciplinary needs made that impossible." Id. at 199. The present case, however, confronts us with the unusual circumstances reserved in Spain; this lockdown was in response to a genuine emergency. The measure was temporary and plaintiffs here were allowed approximately the minimum exercise mandated in Spain within a month after the imposition of the lockdown. Other restrictions were eased as the prison administration determinted that the emergency permitted. These decisions are delicate ones, and those charged with them must be given reasonable leeway. See Hoitt v. Vitek, 497 F.2d 598, 601 (1st Cir. 1974); Gilliard v. Oswald, 552 F.2d 456, 459 (2nd Cir. 1977). The court below carefully reviewed the restrictions of the lockdown in light of the emergency at the prison and

determined that they did not cross the eighth amendment line. We agree with that conclusion.

Affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ART HAYWARD JR., et al.,
Plaintiffs,
v.
RAYMOND K. PROCUNIER, et al.,
Defendants.

NO. C-75-0653-WAI

ORDER

The above-entitled action having come duly on for trial before the Honorable Owen E. Woodruff, Jr., United States Magistrate, and Findings of Fact and Conclusions of Law having been made

and filed with the Court on February 16, 1978; and

Objections to said Findings of Fact and Conclusions of Law, pursuant to Local Rule 410(b), having been filed by plaintiffs on February 24, 1978, and defendants' brief in response having been filed on March 10, 1978; and

The Court having made a de novo review of the file as required by 28 U.S.C. §636(b)(1)(B),

IT IS HEREBY ORDERED that the said Findings of Fact and Conclusions of Law be amended to delete the citation of Cruz v. Skelton, 543 F.2d 86 (5th Cir. 1976) from Conclusion of Law No. 7, p. 26, ln. 21. As so amended, said Findings of Fact and Conclusions of Law are hereby approved and adopted by the Court, and that defendants and each of them have judgment in accordance herewith.

Dated: September 14, 1978

WILLIAM A. INGRAM
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ART HAYWARD JR., et al.,

Plaintiffs,

v.

RAYMOND K. PROCUNIER, et al.,

Defendants.

CIVIL NO. C-75-0653 WAI

MAGISTRATE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction of the Court is invoked under the United States Constitution, and particularly the provisions of the First, Eighth and Fourteenth Amendments

thereto, and under the laws of the United States, particularly Title 42 of the United States Code, section 1983. Plaintiffs' claim for declaratory relief is based upon the provisions of Title 28 of the United States Code, sections 2201 and 2202. The Court has jurisdiction of this cause under the provisions of Title 28 of the United States Code, section 1343.

SUBSTANCE OF THE ACTION

This action arises out of incidents which occurred on December 19, 1974, and action by state authorities subsequent thereto which has been described as "lockdown". Plaintiffs' contentions are that the extent and duration of the "lockdown" and the nature and duration of the conditions of confinement subsequent to December 19, 1974, were such as to constitute a denial of due process and the imposition of cruel or unusual punishment.

Defendants contend that the nature and extent of what has been described as a "lockdown" was not such as described by plaintiffs, that the nature and extent of conditions existent after December 19, 1974, were not such as to constitute a

denial of due process or to be the imposition of cruel or unusual punishment.

It is undisputed that the actions of state officials on December 19, 1974, effected a change in the conditions of confinement of inmates incarcerated in the East Cell Block (the nature, extent and duration of such changes being a matter of dispute as set forth below). It is further undisputed that plaintiffs were not individually provided with any prior notice of the lockdown decision; that the plaintiffs were not given either prior to or immediately following imposition of what plaintiffs characterize as a lockdown a hearing or other opportunity to respond before an impartial board or official; that plaintiffs were not given an opportunity to cross-examine witnesses or to present witnesses, evidence or arguments; and that plaintiffs were not provided with counsel or counsel substitutes. The unavailability of a hearing and other procedural due process rights incident thereto does not include the ability of plaintiffs to pursue a state habeas corpus in connection with either the lockdown or the conditions of confinement incident thereto.

Further, the unavailability of a "hearing" does not include review of inmates' files prior to the release of workers subsequent to December 19, 1974, or the continuing classification process at San Quentin.

It is also undisputed that plaintiffs do not contend in this action than any procedural due process protection should have preceded the imposition of what has been characterized as a "lockdown". Rather plaintiffs confine their procedural due process claim to the period following the imposition on December 19 of the "lockdown" decision.

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Appendix C

DISPUTED FACTUAL ISSUES

The necessity for th continuation of what has been characterized as a "lockdown" in terms of its extent and duration is in dispute between the parties to this case. The nature, extent, and duration of the conditions of confinement in East Block subsequent to December 19, 1974, are in dispute between the parties. These conditions of confinement include, but are not necessarily limited to, such items as: confinement to cells; broken windows; meals; clothing and towels; cleaning supplies; exercise; showers; canteen; schooling; law library; entertainment and visiting. It is also disputed by the parties as to whether the inmates at San Quentin had actual notice that a "lockdown" would result from incidents of December 19, 1974. It is further disputed between the parties that inmates at San Quentin were reviewed by prison officials concerning their security classification for immediate release as a worker and it is further disputed between the parties that the classification process at San Quentin was on-going during this period of time. It is further disputed between these par-

ties that these "hearing", administrative appeal and the availability of state habeas corpus constitute a sufficient provision for review to satisfy any possible requirement of due process applicable to this case.

The case was tried to the Court commencing November 7, 1977, Robert A. Goodin of Heller, Ehrman, White and McAuliffe appearing as counsel for plaintiffs, and Mr. Kenneth Young of the California Attorney General's Office appearing as counsel for defendants. The Court having considered the evidence, argument and papers submitted to the Court for decision, the Court being fully advised now makes findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. Plaintiff Art Hayward was an inmate at East Block, San Quentin State Prison, in the County of Marin, State of California during the period October 9, 1974 through May 27, 1975. Plaintiff Hayward is presently residing in San Francisco, California, and has been discharged from custody. Trial Transcript (hereinafter "Tr.") Vol. I, p. 5, ln. 10-20, Exhibit BR-2.

2. Plaintiff Morris Brown was an inmate at East Block, San Quentin State Prison, in the County of Marin, State of California, during the period January 21, 1975 through April 17, 1975. Plaintiff Brown is currently residing in San Francisco and is currently on parole. Tr. Vol. I, p. 21, ln. 22 through p. 22, ln. 5, Exhibit BR-3.

3. Plaintiff Michael McNabb is an inmate in West Block, San Quentin State Prison, in the County of Marin, State of California. During the period February 19, 1974 through May 7, 1975, plaintiff Michael McNabb was an inmate in the East Block of San Quentin State Prison. Tr. Vol. III, p. 19, ln. 8-12, Exhibit BR-4.

4. Defendant J. J. Enomoto is presently Director of the California Department of Corrections. Joint Pretrial Conference Statement, p. 1.

5. Defendant George W. Sumner is presently Warden of San Quentin State Prison, in the County of Marin, State of California. Joint Pretrial Conference Statement, p. 1.

6. During 1974, East Block house "main line" inmates were those who were

given security classifications of I or II. Inmates with a security classification of I are defined as "inmates who have demonstrated over a period of time that they are no threat to staff or other inmates". Inmates in category II are defined as "inmates who have not demonstrated that they need special housing or are not ready for Category I". Tr. Vol. III, p. 58, ln. 5, p. 59, lin. 19, Exhibit 31.

7. During 1974, prior to December 19th of that year, prison routine for inmates in East Block began with a morning count to assure everyone's presence. Immediately thereafter, inmates were escorted in staggered groups to the Mess Hall for a hot breakfast. Following breakfast, those residents of East Block who were assigned to a prison job reported to work. Residents of East Block without job assignments were returned to their cells and stayed there the rest of the morning. At noon, all inmates were served another hot meal in the Mess Hall, following which assigned inmates returned to their jobs and non-assigned inmates were permitted to utilize the exercise and gymnasium facili-

ties in San Quentin's lower yard until the time necessary to return for the evening count. At approximately 4:00 p.m. the evening count took place, and following the count East Block residents were escorted to the Mess Hall for a hot dinner.

After dinner inmates were permitted night movement as required for a variety of programs and entertainment, including night school, self-help programs, movies, etc. Following night movement, all residents of East Block, except those working on the night shift, were confined to their cells until breakfast.

In addition to the out-of-cell time reflected in the description of the East Block routine contained in finding 7 hereinabove, East Block residents also spent out-of-cell time in so-called "ducated" movement. "Ducated" movement consists of movement for specific purpose, e.g., dental, medical, visiting, classification hearing, etc., pursuant to a written order or "ducat". Tr. Vol. II, p. 9, ln. 15 through p. 12, ln. 7.

8. During 1974, prior to December 19th of that year, showers for East Block residents were provided on a

rotating basis, which typically resulted in a minimum of two showers per week for each inmate. Tr. Vol. II, p. 13, ln. 7-23.

9. During 1974, prior to December 19th of that year, at the time of showers, inmates were given a clean set of "white clothing", e.g., shorts, T-shirts, etc. Inmates were given an opportunity to exchange so-called "blue clothing", e.g., outer shirts and pants, once per week. Tr. Vol. II, p. 13, ln. 24 through p. 14, ln. 8.

10. During 1974, prir to December 19 of that year, cleaning supplies for cell cleaning activities were supplied in bulk to East Block weekly. These supplies were broken out and delivered upon request to inmates as needed. Tr. Vol. V, p. 50, ln. 16-25, Tr. Vol. II, p. 14, ln. 9-25.

11. During 1974, prior to December 19th of that year, residents of East Block also enjoyed a variety of privileges, including visiting rights, movie attendance, course and/or school attendance, and daily use of the canteen from which they could purchase food and personal items. Tr. Vol. II, p. 11, ln. 20

through p. 12, ln. 7; p. 15, ln. 4-17.

12. Prior to December 19, 1974, the California Department of Corrections, and San Quentin State Prison, experienced increasing levels of violence. Defense Exhibits: 0-1 through 165; R; S-1, 2, 3, 4, 5, 6; T; U and V. Defense Testimony: Britt - III, 129-130, 131-133.

13. Between 1970 and 1974 the level of incidents within the Department of Corrections increased from a rate of 1.36 to 4.30 per 100 average institution population. Defense Exhibits: R; T (p. 1-2).

14. Much of the violence within the Department of Corrections was gang and/or racially oriented. Defense Exhibits: R; S1, 2, 3, 4, 5, 6, (pp. 2 & 3); T; Y-3 (pp. 15-17, 18). Defense Testimony: Britt III, 135-142, IV, 46-47.

15. During the year prior to December 19, 1974, San Quentin experienced increasing levels of violence. Defense Exhibits: 0-1 through 1165; R; S-1, 2, 3, 4, 5, 6 (p. 3); T; U and V (Rpts. from 1/2/74 through 6/1/75). Defense Testimony: Hayward Deposition V, 140-141.

16. Between 1970 and 1974 the incident rate at San Quentin went from 1.99 to 6.28. Defense Exhibit: R.

17. A major portion of the incidents at San Quentin were gang and/or racially oriented. Defense Exhibits: 0-1 through 165; R; S-1, 2, 3, 4, 5, 6 (p. 3); T; U and Y-3 (pp. 15-17, 18). Defense Testimony: Britt - III, 136, 141-142, IV, 46-47, 49-50, 82-150; McNabb Deposition - VI, 141-142.

18. During 1974 San Quentin experienced 197 incidents including 82 assaults with weapons (12 fatalities), 7 fights, 71 possession of weapons and 2 attempted escapes. Defense Exhibits: 0-1 through 165; P (BR-1); Q-16 through 170; R; S-1, 2, 3, 4, 5, 6 (p. 3); U and V (Rpts. 1/2/74 through 6/1/75).

19. Different gangs tend to predominate or control different institutions within the Department of Corrections. Defense Exhibits: S-1, 2, 3, 4, 5, 6 (pp. 2 & 3); T and Y-3 (pp. 15-17, 18). Defense Testimony: Britt - III, 136, 138-139.

20. This factor, and rivalries between gangs, interferes with the ability to transfer inmates from one

institution to another. Defense Testimony: Britt - III, 135-136, 138-141; IV, 51-53.

21. It is difficult to ascertain the membership of the gangs. Defense Exhibits: S-1, 2, 3, 4, 5, 6. Defense Testimony: Britt - III, 143-145; IV, 50-51, 81-82, 150-152.

22. Gang influence is pervasive, instructions are known to have been passed from leaders to members from segregation units and from one institution to another. Defense Exhibits: Y-3 (pp. 15-17, 18). Defense Testimony: Britt - IV, 71-74, 150-152.

23. Penalties imposed by the gangs are generally death. Defense Testimony: Britt - IV, 46, 48-49.

24. Gang influence spreads beyond immediate membership. Defense Exhibits: S-1, 2, 3, 4, 5 abd 6. Defense Testimony: Britt - IV, 82-83.

25. Gang oriented incidents have expanded to become racial in nature. Defense Exhibits S-1, 2, 3, 4, 5 and 6; Y-3 (p. 17). Defense Testimony: Britt - III, 142-143.

26. At the time pertinent to this case the major gangs at San Quentin were

the Aryan Brotherhood ("AB"), the Black Guerilla Family ("BGF"), and the Mexican Mafia ("EME"). Defense Exhibits: S-1, 2, 3, 4, 5, and 6 (p. 3); and T. Defense Testimony: Britt - III, 135.

27. As used within the California Department of Corrections the term "lockdown" has no readily defined meaning. The term as used by the Department of Corrections may be generally defined as:

a. action, affecting all or part of a prison, in which, as a response to an incident or incidents of violence, inmates are returned to their cells;

b. the term is also used to describe the state of affairs following the initial action where security measures are maintained in excess of those extant prior to the "lockdown" but they are not seen as permanent revisions of pre-existing procedures. Defense Testimony: Britt - IV, 59-61, 61-63, 152-153, 154-155.

28. The duration of a "lockdown" may not be judged from the continued usage of the term since:

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a. Increased security restrictions may be permanently adopted in an effort to control violence;
b. security restrictions may be relaxed but have not either become permanent or returned to pre-existing levels;
c. new incidents of violence may necessitate a new "lockdown" and subsequently increased security measures.

29. The term "lockdown" is only useful to describe the initial action, responsive to an act or acts of violence, in which inmates in all or part of an institution are confined to their cells. Thereafter conditions of confinement must be specifically analyzed at any particular point in time and may not be deemed to be of a set character by reason of the use of the term "lockdown".

30. In December of 1973 San Quentin, together with other major institutions, was the subject of a departmental "lockdown" as part of an effort to control increasing violence within the correctional system. Defense Exhibits: S-1, 2, 3, 4, 5 and 6; T; AB; AC and AD. Defense Testimony: Britt - III, 133, IV,

54-55. Weber V, 18-19.

31. In connection with this "lock-down" new categories were created, all inmates were screened with respect to violence potential, and a program of increased security measures, with particular emphasis upon weapons control, was instituted. Defense Exhibits: S-1, 2, 3, 4, 5 and 6; T; V (Rpts. 1/2/74 through 6/1/75); AA; AB; AC and AD. Defense Testimony: Britt - IV, 56-57, 65-66, 83-84. Weber -V, 18-19.

32. The accompanying departmental reorganization affected San Quentin's population in terms of size and character. Defense Exhibits: S-1, 2, (p. 4), 3, 4, 5 (p. 2) and 6; Y-3 (p. 17); AF. Defense Testimony: Britt - IV, 57-59.

33. San Quentin received from other portions of the system inmates who were, or potentially were, disruptive. Defense Exhibits: S-1, 2 (p. 4), 3, 4, 5 (p. 2) and 6; Y-3 (p. 17). Defense Testimony: Britt - IV, 57-59.

34. This factor, together with gang rivalries, meant that San Quentin's violence problems had to be worked out at that institution. Defense Testimony: Britt - III, 135, 136, 138-141; IV 51-53, 57-59.

35. San Quentin's population remained at a high level. Defense Exhibits: S-1, 2 (p. 4), 3, 4, 5 (p. 2) and 6; AF.

36. There were subsequent "lock-downs" at San Quentin during 1974. Conditions at San Quentin never returned to the pre-December 1973 format. Defense Exhibits: S-1, 2, 3, 4, and 5; T; AB; AC; AD and AE. Defense Testimony: Britt - IV, 61-70.

37. During 1974 several suggestions were made concerning operations at San Quentin and several methods to control violence were attempted. Defense Exhibits: S-1, 2, 3, 4, 5 and 6; T; V (Rpts. 1/2/74 through 6/1/75); W; X; Y-1, 2 and 3: Z; AA; AB; AC; AD and AE. Defense Testimony: Britt -IV, 61-70, 75-81, 83-85.

38. During 1974 the major option appeared to be closing the institution. Defense Exhibits: AG-6 and AG-9. Defense Testimony: Britt - IV, 85, 125.

39. Despite measures taken to prevent violence, during 1974, 170 incidents occurred at San Quentin, including 82 assaults with weapons with 12 fatalities for an incident rate of 6.28 compared with 1.99 in 1970. Defense

Exhibits: 0-1 through 165; P (BR-10); Q-167 through 170; R; S-1, 2, 3, 4, 5 and 6; U and V (Rpts. 1/2/74 through 6/1/75).

40. On December 19, 1974, residents of East Block, as were all other inmates at San Quentin, were placed in lockdown status. The imposition of lockdown status on the Prison represents the implementation of the institution's disturbance control plan based on the occurrence of one of several enumerated types of emergency. The authority for imposing a lockdown and the enumeration of the types of emergency for which it is authorized is contained in Section 4402 of the Rules and Regulations of the Director of Corrections of the State of California. Tr. Vol. III, p. 63, ln. 18 - p. 64, ln. 1; Exhibit 1; Tr. Vol. II, p. 4, ln. 10-25; Exhibit 35.

41. On December 19, 1974, two incidents of violence occurred, one in the South Dining Hall and the second, shortly thereafter, in the lower yard. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 86-96. Weber - V, 19-23.

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42. These incidents arose from a history of violence between the Black Guerilla Family and the Mexican Mafia. Defense Exhibit: P (BR-1). Defense Testimony - Britt - V, 163.

43. Two inmates were killed in these incidents. Defense Exhibit P (BR-1).

44. Although consideration was given after the first incident to the possibility that the violence could be contained, the nature of the second incident showed a potential for wide-spread violence. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 93-94, 94-96. Weber - V, 22-23. Nyberg - V, 83.

45. The initial incident involved gang members housed in segregation units. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 92-93, 94 and 95.

46. The second incident involved the general population and appeared to be a gang attack on non-gang members. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 94-95, V, 5-6. Nyberg - V, 83.

47. The gangs and inmates involved were of different racial origins.

Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 86.

48. The incidents held the potential for racial violence. Defense Exhibit: P (BR-1). Defense Testimony: Britt - V, 5-6.

49. The decision to "lockdown" the institution was made in light of the two incidents of violence of December 19, 1974, their nature and the background of violence at San Quentin. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 94-96.

50. The decision to place San Quentin on lock down status on December 19, 1974 was made by the then-Warden Kenneth Britt. In imposing the lock down status, prison authorities acted pursuant to Section 4402 of the California Rules and Regulations of the Director of Corrections of the State of California and San Quentin's disturbance control plan promulgated pursuant thereto. The decision to impose a lock down on San Quentin on December 19, 1974, represented a judgment by Warden Britt that a state of emergency existed at San Quentin on December 19, 1974. Tr. Vol. III, p. 62, ln. 10 - p. 63, ln. 17; p. 64, ln. 2-18; Exhibit 1; Tr. Vol. II, p.

4, ln. 10-25; Exhibit 35; Tr. Vol. IV, p. 154, ln. 1 -p. 155, ln. 16.

51. None of the named plaintiffs was in any way involved in or responsible for the altercation on December 19, 1974, which precipitated the lock down which commenced on that date. Further, of the class which these plaintiffs represent pursuant to this Court's order of October 19, 1977, the only members who were in any way involved in or responsible for the altercation which occurred on December 19, 1974, and which precipitated the lock down which commenced on that date are those identified in defendants' response to plaintiffs' Interrogatory 20, at page 114, line 1, through page 16, line 19, of defendants' consolidated response to plaintiffs' first set of interrogatories. Tr. Vol. III, p. 92, ln. 14 - p. 95, ln. 20; Tr. Vol. IV, p. 45, ln. 10-16.

52. Inmates at San Quentin had prior notice that incidents of this sort would result in a "lockdown" because of prior lockdowns which had occurred at San Quentin in response to incidents of violence. Defense Testimony: Britt IV, 61-63, 92. Weber - V, 22. Nyberg - V, 83. Hayward Deposition - V, 139-140.

53. Subsequently, inmates were periodically given notice of the nature and extent of security procedures at San Quentin and the extent to which various programs were available to them.

a. Broadcasts were made over KSO News, a regularly scheduled broadcast. This program, and others, was available in the cells via an "intercom" system using earphones. At least 70% of the inmates in East Block had this available.

b. The San Quentin Newspaper, intended to provide such information, was delivered to East Block and was either available to them incident to meals or was delivered to the cells.

Defense Exhibits: AG-1 (p. 3); AW 1, 2 and 3; AX. Plaintiffs' Exhibits: PX 32. Defense Testimony: Britt - IV, 103-105. Nyberg - V, 83-34. Gard - V, 124-127. Hayward Deposition -V, 145-148. Interrogatories V, 151, 152. Worster - VI, 57-59, 70-71. Bolton - VII, 6-8. Hahn - VII, 11-14.

54. Hearings concerning degree and conditions of confinement are and were available within the California Department of Corrections by the Director's

review of institutional action, the inmate classification process and the inmate appeals procedure. Defense Testimony: IV, 141-142; V, 10-11, 31; VI, 33-34, 35-36, and 93. Plaintiffs' Exhibit: PX 1.

55. If departmental remedies are unavailing, inmates have state habeas corpus with which to challenge degree and conditions of confinement.

56. Immediately after the "lockdown", priority was given by institutional officials to the restoration of essential services such as hot meals, visiting, laundry and canteen as soon as possible. Defense Exhibits: AG-1 (p. 3) and AH. Defense Testimony: Britt - IV, 97-103, 117.

57. Subsequent to the "lockdown" institutional officials were concerned with and attempted to ameliorate the maximmum security precautions imposed at San Quentin as soon as possible consonant with safety to inmates and staff. Defense Exhibits: AG-1 (p. 3) and AH. Defense Testimony: Britt -IV, 97-103, 117.

58. Beginning immediately after the "lockdown", inmate workers needed to provide essential services at the insti-

tution, were screened to see whether they could be safely released for operation of the services with safety. Defense Exhibits: AG-1 (p. 3); AG-6 and AG-8. Defense Testimony: Britt - IV, 97-98, 117.

59. Throughout the period in question in this case inmates were screened to see if they could be safely released for work assignments as programs at the institution began operating. Defense Exhibits: AG-1 (p. 3); AG-6 and AG-8. Defense Testimony: Britt - IV, 97-98, 169-170. Weber - V, 38, 39-40. Worster - VI, 32-33. Hahn - VII, 73.

60. Initially, such workers who were not already in an honor or semi-honor unit were transferred to North Block when work assignments were received by them, although, throughout this period a certain number of inmate workers were housed in East Block. Defense Exhibits: AG-3, AG-5, AG-6, AG-7, AG-8, AI-1 (pp. 1, 2) and AJ. Defense Testimony: Hayward Deposition - V, 148-49. Worster - VI, 34. Hahn, VII - 26.

61. Conversely those without work assignments would be transferred to East Block. Defense Exhibits: AG-3, AG-5,

AG-6, AG-7, AG-8, AI-1 (pp. 1 & 2) and AJ. Defense Testimony: Hayward Deposition - V, 148-149. Worster - VI, 34.

62. At, and immediately after, December 19, 1974, East Block housed primarily unassigned inmates. During 1975 its character was changed. It then primarily housed assigned workers. Defense Testimony: VI, 40-41; VII, 26.

63. Throughout the period in question in this case institutional personnel used all formal and informal sources of information at their disposal to evaluate the temper of the institution with a view to reducing maximum security precautions when it appeared that this could be done with safety. Defense Exhibit: AG-1 (p.3). Defense Testimony: Britt - IV, 96-97, 103, 113-117, 143-144. Weber - V, 23-26. Worster - VI, 56-57.

64. On at least one occasion a relaxation of security procedures had to be rescinded because of a new incident involving East Block. Defense Exhibit: Q-184 (BR-1). Defense Testimony: Britt - IV, 118-120. Worster - VI, 52-54. Hahn - VII, 26-27.

65. Subsequent to December 19, 1974, violent incidents occurred at San

Quentin involving East Block and weapons were found in the Block. Defense Exhibits: Q-167 through 234, particularly sub-numbers: 172, 175, 186, 194, 206, 220, 221, 223 (BR-1);[1] V (Rpts. 1/2/74 through 6/1/75); AG-6, AZ (pp. dated 12/31/74, 1/4/75) and BA-1 through 4 (particularly dates of 12/31/74, last page of BA-1, 3/1/75, 3/4/75). Defense Testimony: Britt - IV, 118-120; V, 14-15. Worster - VI, 52-54, 55. Riley - VI, 124-126. Hahn - VII, 26-27, 44, 81.

66. To operate the institution as safely and effectivly as possible, overtime was required of institutional personnel and non-custodial personnel were assigned to custody positions. Defense Exhibits: AG-1 (3), AG-2, AG-3, AG-5, AH and AI-1. Defense Testimony: IV, 100, 124; V, 26-27, 29; VI, 75, 98.

67. At this time institutional personnel concluded that because of the level of violence at San Quentin and prior experience with violence at San Quentin it would be necessary to make a

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[1] Exhibit explained by testimony VI, 67-69. Correlation of 103b cards (BR-1) with incident reports (Q-167-234) was prepared by Attorney General Staff. It is attached hereto as an appendix.

complete reorganization of San Quentin structurally and procedurally to provide for its operation in maximum safety. Defense Exhibits: AG-1 (p. 3), AG-2, AG-3 and AG-6. Defense Testimony: Britt - V, 120-124, 125-126, 156-163. Nyberg - V, 72-82, 85. Shepherd - VI, 9-26.

68. Because the conditions at San Quentin required maintenance of maximum security, operating procedures were formalized on a short term basis, pending the long-term reorganization, to reorganize programs and staff at San Quentin. Defense Exhibits: AG-1 (p. 3), AG-3, AG-7, AG-8, AH and AI-1 and 2. Defense Testimony: Britt - IV, 120-124, 156-163.

69. This short term reorganization was memorialized in two memoranda, one bearing a date of January 12, 1975, and another undated, which took effect in the latter part of February, 1975. Defense Exhibits: AG-1 (p. 3), AG-3, AG-7, AG-8, AG-9, AH, AI-1 and 2 (and compare visiting dates, Ex. BP) and AJ. Defense Testimony: Britt - IV, 120-124. Weber - V, 27-31. Worster - VI, 54-55. Hahn - VII, 23-25.

70. Throughout the period in question in this case, detailed planning was done at the institution, in conjunction with departmental headquarters in Sacramento, on a long-term structural and procedural reorganization at San Quentin. Defense Exhibits: AG-1 (p. 3), AG-2, AG-3, AG-4, AG-6, AG-7, AG-8, AG-9, AK, AL, AM, AN and AO. Defense Testimony: Britt -IV, 126-132. Nyberg - V, 72-82, 85. Shepherd - VI, 9-17.

71. These plans for a long-term reorganization were approved and implementation was begun in approximately March of 1975. Defense Exhibits: AF, AG6, AP, AQ, AR, AS-1 through 9, AT, AU and AV. Defense Testimony: Britt - III, 125-126, 130-132. Nyberg - V. 72-82. Ingram - V, 100-101. Thomas -V, 105-111. Shepherd - VI, 9-17, 17-20, 28-29. Worster -VI, 38-45, 45-46. McHenry - VI, 101-103. Kesner - VI, 107-108, 112-113. Hahn - VII, 16-17, 18-22.

72. What occurred in the period December, 1974, through March, 1975, at San Quentin may be summarized as follows:

a. A "lockdown" occurred on December 19, 1974. While condi-

tions of a nature which could be defined as a "lockdown" as discussed above existed for some few days thereafter, institutional officials almost immediately began efforts to ameliorate the conditions incident to the "lockdown" insofar as possible consonant with safety of inmates and staff.

b. What occurred thereafter was what may be described as short-term reorganization of San Quentin for its operation under maximum security precautions pending a long-term reorganization.

c. After the lockdown, plans were immediately formulated for a long-term procedural and structural reorganization of San Quentin. These plans were formulated, approved and implementation was begun by March of 1975.

d. What occurred after the "lockdown" was not a continuation of the "lockdown" but a change of San Quentin, procedurally and structurally, into an institution with a higher degree of security.

73. By mid-January, 1975, a significant amount of out-of-cell time was pro-

vided for East Block inmates. Defense Exhibits: AH, AI-1 and AJ. (See findings relating to meals, yard exercise, showers and visiting. See also entries relating to visits, medical and dental appointments, etc., in Ex. AY.)

74. The outside windows in East Block were being constantly broken by inmates. Institutional personnel did replace broken windows and made reasonable efforts to do so as promptly as possible. Defense Exhibits: BC, BD and BE. Defense Testimony: Britt - IV, 133-136, 149-150. Weber - V, 31-32. Hayward Deposition - V, 141, 145. Interrogatories V, 152-153. Shepherd - VI, 21-25, 26, 27. Worster - VI, 51. Riley - VI, 124-126. Hahn - VII, 43-44.

75. With respect to meals after the lockdown the following occurred:

a. After December 19, 1974, bag meals, two per day, were distributed to inmates in their cells. This continued with the exception of at least one hot meal on or about December 27, until December 31, 1974.

b. Thereafter one hot meal a day plus a sack lunch was served until January 12, 1975.

c. Thereafter two hot meals a day were served and later a bag supplement was provided.

d. Providing meals was a lengthy process. Constant supervision was maintained enroute and during the meal and all inmates were searched entering and leaving the mess hall.

e. The hot meals referred to above were served in the mess hall.

Defense Exhibits: AG-1 (p. 4), AG-4, AG-7, AH (pp. 11, 12-12A), AI-1 (pp. 3, 4-5), AJ, AY (pp. dated 1/2/75, 1/3/75, 1/9/75, 1/21/75), AZ (pp. dated 12/19/74, 12/29/74, 1/1/75, 1/4/75, et. seq.),[2] BA-1 (pp. dated 12/26/74 and 12/27/74),[3] BA-2 (pp. dated 1/12/75, 1/13/75, 1/14/75, 1/15/75, 1/16/75, 1/19/75, 1/21/75, 1/22/75, 1/24/75, 1/26/75), BA-3 (pp. dated 2/3/75, 2/16/75, 2/23/75, 2/24/75, 2/27/75, 2/28/75), BA-4 (pp. dated, 3/1/75, 3/2/75, 3/4/75, 3/18/75). BF, BG, BH-1 & 2, BI-1 & 2 and BV. Defense Testimony: Britt - IV, 99-101, 136-137, 146-148. Beckman - V, 89-94, 97-98.

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2 Exhibit explained by testimony VI, 61-62.

3 Exhibit explained by testimony VI, 88, et. seq.

Thomas, V, 104-111, 111-114, 119-120, 120-122. Worster - VI, 46-48, 77, 84-85. Kennedy - VI, 91-92, 95. Kesner - VI, 109-110, 111-112, 114. Riley - VI, 121-122, 122-123, 130-131, 135-137, 138. McNabb Deposition - VI, 140, 142-143. Brown Deposition - VI, 145-151, 153. Hahn - VII, 27-28, 29, 30-33.

76. The warden consulted with appropriate officials with respect to the nutritional adequacy of meals provided inmates. Defense Testimony: Britt - IV, 136-137. Beckman -V, 90.

77. The mess halls were cleaned continuously during the feeding operations and they were clean. Defense Testimony: Thomas - V, 114-115. Kesner - VI, 110-111.

78. Laundry operation was suspended for only approximately a week after December 19, 1974. Defense Exhibits: AH (p. 11) and BK-1 through 3.[4] Defense Testimony: Britt - IV, 137. Bruccoleri - V, 55-63, 64-65, 69-70.

79. Although some shortages were experienced, deliveries of clean cloth-

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4 A typed copy of the list attached to Exhibit BK is attached hereto as an appendix.

ing were made to East Block on dates as set forth in the testimony of Sargeant Bruccoleri in his review of Exhibit BK. Defense Exhibits BK-1 through 3. Defense Testimony: Bruccoleri - V, 57-62.

80. No severe shortage of clean clothing or towels is shown by the evidence in this case. Defense Exhibits: BK-1 through 3. Defense Testimony: Bruccoleri - V, 55-63, 64-65. Riley - VI, 117-119. Brown Deposition - VI, 151-152. Hahn -VII, 41-42.

81. No shortage of cleaning supplies is shown by the evidence in this case. Defense Exhibit: BJ. Defense Testimony: Bruccoleri - V, 49, 51-54, 55, 67-68. Shepherd -VI, 25-26. Riley - VI, 123-125. Hahn - VII, 42-43.

82. Yard Exercise for East Block inmates recommenced on approximately January 16, 1975. Defense Exhibits: AJ, AY (p. dated 1/16/75), AH and AI-1. Defense Testimony: Worster -VI, 51-52. Kesner - VI, 111-112. Riley - VI, 122, 130-131. Hahn - VII, 33-35, 79-80.

83. Within a few days after December 19, 1974, showers were provided East Block inmates. Inmates were first showered in small groups under close custodial control. Special crews were

created at the institution to facilitate showering. Showering was available approximately once a week and efforts were made to achieve a goal of at least two showers per inmate per week. Defense Exhibit: AH (pp. 9, 11, 15). Defense Testimony: Britt - IV, 138, 144-145. Worster - VI, 50-51, 85-87. Riley VI, 115-117, 127-129, 131-132, 135-137. McNabb Deposition - VI, 139-140. Brown Deposition - VI, 144-145. Hahn - VII, 39-41.

84. Limited canteen was provided East Block by December 26, 1974, and modified canteen once-a-day per week by January 12, 1975, and full canteen by March 19, 1975. Initially after December 19, 1975, "shopping lists" from inmates were filled by institutional personnel. Subsequently groups of ten to fifteen inmates were escorted to the canteen. Subsequently canteen was available incident to meals. Defense Exhibits: AG-7, AH (pp. 11, 14), AI-1 (pp. 3,8), AJ, AZ (pp. dated 1/3/75, 1/4/75), BF, BG, BL and BM. Defense Testimony: Bruccoleri - V, 49, 53-55, 67-68. Hayward Deposition - V, 145. Worster - VI, 48-49, 85-86. Riley -VI, 119-120, 135-137. Hahn - VII, 35-36.

85. The evidence in this case shows no denial of access to courts because of any restrictions upon the use of the institutional law library. Defense Exhibits: AH (pp. 11, 16), AI-1 (pp. 3, 9), BB-1 & 2,[5] BO and BN. Defense Testimony: Hayward Deposition - V, 137-139. Interrogatories - V, 152. McHenry - VI, 97-101. McNabb Deposition - VI, 143. Brown Deposition - VI, 152, 153. Hahn - VII, 36-38.

86. Inmates had available to them in their cells radios and books and, in some instances, televisions. Defense Testimony: Hayward Deposition - V, 145-148. Interrogatories -V, 151, 152. McNabb Deposition - VI, 142.

87. No denial of "entertainment" to East Block inmates is shown by the evidence in this case.

88. Restoration of visiting received high priority at the institution. By December 25, 1974, there was restricted visiting. By December 29, 1974, visiting was allowed two days per week, three days per week by January 9, 1975, and five days a week visiting in March. Defense Exhibits: AG-1 (p. 3),

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5/Exhibit explained by testimony VI, 62-64.

AG-3, AG-7, AH (pp. 11, 13), AI-1 (pp. 3, 7), AY (p. dated 1/9/75), AZ (pp. dated 12/24/74, 12/25/74, 12/23/74, 12/25/74), BA-2 (pp. dated 1/7/75, 1/11/75, 1/12/75, 1/13/75, 1/19/75, 1/26/75, 1/27/75, BA-3 (pp. dated 2/1/75, 2/2/75, 2/16/75) BA-4 (p. dated 3/10/75), BF, BG, BP[6] and BQ.[7] Defense Testimony: Britt - IV, 99-101, 137-138. Nyberg - V, 72-82, 85. Interrogatories - V, 155. Worster - VI, 66-67. Kennedy - VI, 92-93, 93-94. McNabb Deposition - VI, 141. Brown Deposition - VI, 152-153. Hahn - VII, 38-39.

89. There is no evidence that any plaintiff was deprived of the opportunity for schooling. Defense Testimony: V, 154; VI, 141, 153.

90. Only such restrictions upon inmate activity were imposed as were necessary to maintain adequate security for the safety of inmates and staff. Defense Testimony: Britt -IV, 99-103, 154; V, 3-5.

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6 Exhibit explained by testimony VI, 64-66. A summary of these records prepared by San Quentin Staff is appended hereto as an appendix.

7 See Worster testimony for explanation.

91. Plaintiff Hayward was housed in East Block from November 13, 1974, to April 17, 1975, in Cell 1E93. Defense Exhibits: BR-4, BU-1. (See VI, 67-69 for explanation of exhibits.)

92. Plaintiff McNabb was housed in East Block from February 29, 1975, to May 7, 1975, in Cells 1E110, 3E73, and 3D70. Defense Exhibits: BR-3 and BU-2. (See VI, 67-69 for explanation of exhibits.)

93. Plaintiff Brown was housed in East Block from January 22, 1975, to April 17, 1975, in Cells 2E106 and 2E12. Defense Exhibits: BR-2 and BT. (See VI, 67-69 for explanation of exhibits.)

CONCLUSIONS OF LAW

1. The due process requirements of the Fourteenth Amendment are inapplicable to this case. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Gilliard v. Oswald, 552 F.2d 456 (2nd Cir. 1977), rehearing denied, 557 F.2d 359; Newman v. Alabama, 559 F2d 283 (5th Cir. 1977); Potter v. Clark, 497 F2d 1206 (7th Cir. 1974); Hoitt v. Vitek, 497 F2d 598 (1st Cir. 1974).

2. Due process does not require a

hearing prior or subsequent to actions by prison authorities such as were taken on December 19, 1974, by the prison administration at San Quentin. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Gilliard v. Oswald, 552 F2d 456 (2nd Cir. 1977), rehearing denied, 557 F.2d 359; Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); Potter v. Clark, 497 F.2d 1206 (7th Cir. 1974); Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974); Hodges v. Klein, 421 F.Supp. 1224 (D.M.J. 1976).

3. The federal Constitution does not require that subsequent to actions such as were taken by the San Quentin Administration on December 19, 1974, a hearing concerning continuation of maximum security precautions be reviewed by a civilian body outside the Department of Corrections. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).

4. The actual notice to inmates of the likelihood of a "lockdown" after a violent incident, the notice to in-

mates provided by the San Quentin administration concerning the extent and duration of security precautions and consequent limitations on programs, the contacts with inmates by prison staff concerning the temper of the institution, the individual screening of inmate files, the on-going departmental classification process, the inmate appeal process, and the avilability of state habeas corpus more than adequately provide for any incidents of due process which might be held applicable to a situation such as is involved in this suit. Cooper v. Riddle, 540 F.2d 731 (4th Cir. 1976).

5. In a situation such as this where changed programs, policies and security measures were applied to inmates as a whole, a hearing concerning such changes is not required by the Fourteenth Amendment. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976).

6. Under the facts of this case no denial of access to court in violation of the federal Constitution is shown. Phillips v. Anderson, 386 F.Supp. 371 (E.D. Okla. 1974).

7. The state has no Eighth Amendment obligation to provide prisoners with opportunities to obtain education, attend vocational school or entertainment. Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); Cruz v. Skelton, 543 F.2d 86 (5th Cir. 1976); Nadeau v. Helgemoe, 423 F. Supp. 1250 (D.C. N.H. 1976); Furrow V. United States Board of Parole, 418 F. Supp. 1309 (D.C. Maine 1976).

8. Reasonable limitations upon inmates' visitation rights are not violative of the Eighth Amendment. Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); McCray v. Sullivan, 509 F.2d 1332 (5th Cir. 1975) on remand, 399 F.Supp. 271 (M.D. Ala. 1975).

9. Limitations upon visitation rights as shown in this case were reasonable. (See authorities cited under Conclusion No. 8.)

10. It is not an infliction of cruel and unusual punishment where limitations or deprivations are incident to reasonable actions intended to preserve the safety of the inmates at

the institutuion. Gilliard v. Oswald, 552 F.2d 456 (2nd Cir. 1977), rehearing denied, 557 F.2d 359; Crowe v. Leeke, 550 F.2d 184 (4th Cir. 1977).

11. Any limitations or deprivations subsequent to December 19, 1974, were incident to reasonable actions by prison authorities necessitated by their duty to safeguard the inmates in their custody. (See authorities cited in support of Conclusion No. 10.)

12. A state's obligation under the Eighth Amendment is to furnish its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety. Moody v. Daggett, 429 U.S. 78 (1976); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972); O'Brien v. Moriarity, 489 F.2d 941 (1st Cir. 1974); LaReau v. McDougall, 473 F.2d 974 (2nd Cir. 1972), cert. denied, 404 U.S. 878 (1973); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).

13. Any limitations or deprivations shown by the facts of this case were not of such a nature or of such a duration as to constitute cruel and

unusual punishment under the Eighth Amendment and prison authorities acted with reasonable diligence to ameliorate these conditions as soon as possible consonant with safety of inmates and staff. Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972).

14. Plaintiffs have not shown either a violation of the due process clause of the Fourteenth Amendment or the Eighth Amendment prohibition against cruel and unusual punishment. (See authorities cited in support of Conclusions 1, 2, 3, 5, 7, 8, 9, 10, 11, 12 and 13.)

15. Confinement to cells is not per se an imposition of cruel and unusual punishment. Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972).

16. Where, as here, restrictions and limitations are not punitive in nature and are applied to a class as a whole and not to particular individuals, any Eighth Amendment concept concerning relation of penalty to offense is inap-

plicable. Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972); Sweet v. South Carolina Department of Corrections, 529 F.2d 854 (4th Cir. 1975).

17. Under the facts of this case any restrictions or limitations were reasonably related to correctional needs. (See authorities cited above.)

It is recommended that the foregoing findings of fact and conclusions of law entered by the Magistrate be adopted and approved by the Court.

DATED: February 2, 1978

OWEN E. WOODRUFF, JR.
United States Magistrate

No. 80-1154

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IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1980

ART HAYWARD, JR., MICHAEL McNABB and MORRIS L. BROWN, Petitioners,

vs.

RAYMOND K. PROCUNIER, JIRO J. ENOMOTO, WALTER BRITT, ROBERT M. REES, L. H. FUDGE, C. L. SWAGERTY, D. W. SMITH and DON R. WEBER, Respondents.

OPPOSITION OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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QUESTION PRESENTED

Whether a state must, after the imposition of increased security throughout an institution, itself initiate procedures affording a hearing upon the propriety of such measures to the inmate population of that institution who may themselves, individually and collectively, initiate administrative, state court and federal court proceedings challenging the conditions of their confinement.

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No. 80-1154

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OPPOSITION OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is attached hereto as Appendix A and is reported at 629 F.2d 599. The trial court order, adopting, as modified

therein, the Findings of Fact and Conclusions of Law of the United States Magistrate before whom the case was tried is attached hereto as Appendix B. The Findings of Fact and Conclusions of Law of the United States Magistrate before whom the action was tried is attached hereto as Appendix C. Neither Appendix B or C has been reported.

JURISDICTION

Petitioners assert jurisdiction under 28 United States Code section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Petitioners allege the Fourteenth Amendment to the United States Constitution is involved, providing, in pertinent part:

". . . nor shall any state deprive any person of life,

/

liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

A. Procedural History

A complaint was filed on April 4, 1975, under 42 U.S.C. § 1983, asking for damages and declaratory and injunctive relief, by four prisoners proceeding in forma pauperis and in propria persona naming four individuals as defendants (CT 1-14). Motions to dismiss this complaint were filed (CT 15-44).

Counsel was then appointed to represent the prisoners and, by stipulation, matters were held in abeyance pending filing of a first-amended complaint (CT 45-47).

The first-amended complaint by three prisoners was filed November 21, 1975 (CT 48). A motion to dismiss was filed on December 9, 1975 (CT 58). By order

filed February 10, 1976, the motion to dismiss was denied with 30 days afforded to file an answer to the first-amended complaint (CT 123). An answer was filed on February 27, 1976 (CT 124).

Discovery then proceeded in the case (CT 136-436).

Plaintiffs (hereinafter, petitioners) and defendants (hereinafter, respondents) filed opposing motions for summary judgment (CT 437, 442). Petitioners' motion included a request for class certification pursuant to Rule 23 of Federal Rules of Civil Procedure and an order for bifurcation pursuant to Rule 42 of the Federal Rules of Civil Procedure (CT 438). Respondents' motion for summary judgment was accompanied by a renewed motion to dismiss (CT 442). By order of court, filed April 20, 1977, petitioners' motion to bifurcate was

denied, petitioners' motion for class certification was noticed for further argument, and respondents' motion for summary judgment on the issue of damages was granted. The opposing motions for summary judgment were otherwise denied (CT 503-504).

By stipulation between the parties this case was referred for nonjury trial to a United States Magistrate (CT 505-506).

A renewed motion to dismiss was made by respondents' on August 16, 1977, based upon the partial grant of summary judgment to respondents (on the issue of damages) by the order of April 20, 1977 (CT 507-510).

By order filed October 11, 1977, defendants Procunier, Britt, Rees, Fudge, Swagerty, Smith and Weber were dismissed as defendants in the case and

it was further ordered by the court that, pursuant to Rule 25, Federal Rules of Civil Procedure, the present warden of San Quentin Prison, George Sumner, was substituted in as a defendant in the place of defendants Britt and Rees (CT 517). By order filed October 19, 1977, a class was certified consisting of all persons who were confined in East Block, San Quentin State Prison on December 19, 1974, or who are now confined there. The order included those who will be confined in East Block in the future (CT 518-519).

This matter then proceeded to trial.

The magistrate's findings of fact and conclusions of law were filed February 2, 1978 (CT 632).

By order filed September 15, 1978, the district court judge amended the findings of fact and conclusions of law

by deleting one citation from the conclusions of law and, as so amended, approved the findings of fact and conclusions of law. They were adopted by the court and the court further ordered that respondents, and each of them, have judgment in accordance with those findings of fact and conclusions of law as amended (CT 717-718).

Judgment was entered in this case on October 16, 1978 (CT 719).

Notice of Appeal was filed by petitioners on November 15, 1978 (CT 720).

A decision was rendered by the United States Court of Appeal on October 3, 1980 (629 F.2d 599), affirming the decision of the District Court (Appendix A).

B. Factual Summary

The evidence adduced at trial is most fully digested in the Magistrate's

Findings of Fact (Appendix C). Those findings, uncontested by petitioners, in pertinent part, are as follows:

UNDISPUTED FACTS

It was undisputed that the actions of state officials on December 19, 1974, effected a change in the conditions of confinement of inmates incarcerated in the East Cell Block (the nature, extent and duration of such changes being a matter of dispute). It was further undisputed that petitioners were not individually provided with any prior written notice of the lockdown decision (but actual notice was in dispute [CT 635]); that the petitioners were not given, either prior to or immediately following imposition of the lockdown, a hearing or other opportunity to respond before an impartial board or official; that petitioners were not given an

opportunity to cross-examine witnesses or to present witnesses, evidence or arguments; and that petitioners were not provided with counsel or counsel-substitute. Petitioners could pursue a state habeas corpus (or administrative appeal [CT 635]) in connection with either the lockdown or the conditions of confinement incident thereto. Further, inmates' files were reviewed prior to the release of inmate workers subsequent to December 19, 1974, and the classification process at San Quentin continued throughout this period (CT 633).

Petitioners did not contend in this action that any procedural due process protection should have preceded the imposition of what has been characterized by appellants as a "lockdown." Rather appellants confined their procedural due process claim to the

period following the imposition on December 19 of the "lockdown" decision (CT 633-634).

FINDINGS ON DISPUTED FACTS

During 1974, East Block housed "mainline" inmates with security classifications of I or II. Inmates with a security classification of I were "inmates who have demonstrated over a period of time that they are no threat to staff or other inmates." Inmates in category II were "inmates who have not demonstrated that they need special housing or are not ready for category I" (CT 636-637).

During 1974, prior to December 19 of that year, prison routine for inmates in East Block began with a morning count to assure everyone's presence. Immediately thereafter, inmates were escorted in staggered groups to the Mess Hall for a

hot breakfast. Following breakfast, those residents of East Block who were assigned to prison jobs reported to work. Residents of East Block without job assignments were returned to their cells and stayed there the rest of the morning. At noon, all inmates were served another hot meal in the Mess Hall, following which assigned inmates returned to their jobs and non-assigned inmates were permitted to utilize the exercise and gymnasium facilities in San Quentin's lower yard until the time necessary to return for the evening count. At approximately 4:00 p.m. the evening count took place, and following the count East Block residents were escorted to the Mess Hall for a hot dinner (CT 637).

After dinner inmates were permitted night movement as required for a variety

of programs and entertainment, including night school, self-help programs, movies, etc. Following night movement, all residents of East Block, except those working on the night shift, were confined to their cells until breakfast (CT 637).

In addition East Block residents also spent out-of-cell time in so-called "ducated" movement. "Ducated" movement consisted of movement for specific purpose, e.g., dental, medical, visiting, classification hearing, etc., pursuant to a written order or "ducat" (CT 637).

During 1974, prior to December 19 of that year, showers for East Block residents were provided on a rotating basis, which typically resulted in a minimum of two showers per week for each inmate. During 1974, prior to December 19 of that year, at the time of showers,

inmates were given a clean set of "white clothing," e.g., shorts, T-shirts, etc. Inmates were given an opportunity to exchange so-called "blue clothing," e.g., outer shirts and pants, once per week (CT 638).

During 1974, prior to December 19 of that year, cleaning supplies for cell cleaning activities were supplied in bulk to East Block weekly. These supplies were broken out and delivered upon request to inmates as needed (CT 638).

During 1974, prior to December 19 of that year, residents of East Block also enjoyed a variety of privileges, including visiting rights, movie attendance, course and/or school attendance, and daily use of the canteen from which they could purchase food and personal items (CT 638).

Prior to December 19, 1974, the California Department of Corrections, and San Quentin State Prison, experienced increasing levels of violence. Between 1970 and 1974 the level of incidents within the Department of Corrections increased from a rate of 1.36 to 4.30 per 100 average institution population. Much of the violence within the Department of Corrections was gang and/or racially oriented (CT 638).

During the year prior to December 19, 1974, San Quentin experienced increasing levels of violence. Between 1970 and 1974 the incident rate at San Quentin went from 1.99 to 6.28 (CT 639).

A major portion of the incidents at San Quentin were gang and/or racially oriented. Different gangs tend to predominate or control different institutions within the Department of

Corrections. This factor and rivalries between gangs interfere with the ability to transfer inmates from one institution to another.

It is difficult to ascertain the membership of the gangs. Gang influence is pervasive, instructions are known to have been passed from leaders to members from segregation units and from one institution to another. Penalties imposed by the gangs are generally death. Gang influence spreads beyond immediate membership. Gang oriented incidents have expanded to become racial in nature. At the time pertinent to this case the major gangs at San Quentin were the Aryan Brotherhood ("AB"), the Black Guerilla Family ("BGF"), and the Mexican Mafia ("EME") (CT 639-640).

As used within the California Department of Corrections the term

"lockdown" has no readily defined meaning. The term as used by the Department of Corrections may be generally defined as action, affecting all or part of a prison, in which, as a response to an incident or incidents of violence, inmates are returned to their cells. But the term is also used to describe the state of affairs following an initial action where security measures are maintained in excess of those extant prior to the "lockdown" but they are not seen as permanent revisions of pre-existing procedures (CT 640).

The duration of a "lockdown" may not be judged from the continued usage of the term since increased security restrictions may be permanently adopted in an effort to control violence, security restrictions may be relaxed but have not either become permanent or

returned to pre-existing levels, or new incidents of violence may necessitate a new "lockdown" and subsequently increased security measures (CT 641).

The term "lockdown" is only useful to describe the initial action, responsive to an act or acts of violence, in which inmates in all or part of an institution are confined to their cells. Thereafter conditions of confinement must be specifically analyed at any particular point in time and may not be deemed to be of a set character by reason of the use of the term "lockdown" (CT 641).

In December of 1973 San Quentin, together with other major institutions, was the subject of a departmental "lockdown" as part of an effort to control increasing violence within the correctional system. In connection with

this "lockdown" new categories were created, all inmates were screened with respect to violence potential, and a program of increased security measures, with particular emphasis upon weapons control, was instituted. The accompanying departmental reorganization affected San Quentin's population in terms of size and character. San Quentin received from other portions of the system inmates who were, or potentially were, disruptive. This factor, together with gang rivalries, meant that San Quentin's violence problems had to be worked out at that institution (CT 641-642).

San Quentin's population remained at a high level (CT 642).

There were subsequent "lockdowns" at San Quentin during 1974. Conditions at San Quentin never returned to the

pre-December 1973 format (CT 642).

During 1974 several suggestions were made concerning operations at San Quentin and several methods to control violence were attempted. During 1974 the major option appeared to be closing the institution (CT 642).

Despite measures taken to prevent violence, during 1974, 170 incidents occurred at San Quentin, including 82 assaults with weapons with 12 fatalities for an incident rate of 6.28 compared with 1.99 in 1970 (CT 643).[1/]

On December 19, 1974, residents of East Block, as were all other inmates at San Quentin, were placed in lockdown status. The imposition of lockdown status on the prison represented the implementation of the institution's disturbance control plan based on the

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1. See also CT 639, paragraph 18.

occurrence of one of several enumerated types of emergency. The authority for imposing a lockdown and the enumeration of the types of emergency for which it was authorized was contained in section 4402 of the Rules and Regulations of the Director of Corrections of the State of California (CT 643).

On December 19, 1974, two incidents of violence occurred, one in South Dining Hall and the second, shortly thereafter, in the lower yard. These incidents arose from a history of violence between the Black Guerilla Family and the Mexican Mafia. Two inmates were killed in these incidents (CT 643).

Although consideration was given after the first incident to the possibility that the violence could be contained, the nature of the second incident showed a potential for widespread

violence. The initial incident involved gang members housed in segregation units. The second incident involved the general population and appeared to be a gang attack on non-gang members. The gangs and inmates involved were of different racial origins. The incidents held the potential for racial violence (CT 643-644). The decision to "lockdown" the institution was made in light of two incidents of violence of December 19, 1974, their nature, and the background of violence at San Quentin. The decision to place San Quentin on lockdown status on December 19, 1974, was made by the then-Warden Kenneth Britt. In imposing the lockdown status, prison authorities acted pursuant to section 4404 of the California Rules and Regulations of the Director of Corrections of the State of California

and San Quentin's disturbance control plan promulgated pursuant thereto. The decision to impose a lockdown on San Quentin on December 19, 1974, represented a judgment by Warden Britt that a state of emergency existed at San Quentin on December 19, 1974 (CT 644).

None of the named plaintiffs was in any way involved in or responsible for the altercation on December 19, 1974, which precipitated the lockdown which commenced on that date. Further, of the class which these plaintiffs represent pursuant to the Court order of October 19, 1977, the only members who were in any way involved in or responsible for the altercation which occurred on December 19, 1974, and which precipitated the lockdown which commenced on that date are those identified in defendants' response to plaintiffs'

Interrogatory No. 20, at p. 114:1-116:19 of defendants' consolidated response to plaintiffs' first set of interrogatories (CT 645).[2/]

Inmates at San Quentin had prior notice that incidents of this sort would result in a "lockdown" because of prior lockdowns which had occurred at San Quentin in response to incidents of violence (CT 645).

Subsequently, inmates were periodically given notice of the nature and extent of security procedures at San Quentin and the extent to which various programs were available to them. Broadcasts were made over KSQ News, a regularly scheduled broadcast. This program, and others, was available in the cells via an "intercom" system using

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2. Interrogatory contained at CT 319-321.

earphones. At least 70 percent of the inmates in East Block had this available. The San Quentin Newspaper, intended to provide such information, was delivered to East Block and was either available to inmates incident to meals or was delivered to the cells (CT 645-646).

Hearings concerning degree and conditions of confinement are and were available within the California Department of Corrections by the Director's review of institutional action, the inmate classification process and the inmate appeals' procedure.

If departmental remedies are unavailing, inmates have state habeas corpus with which to challenge degree and conditions of confinement (CT 646).

Immediately after the "lockdown," priority was given by institutional

officials to the restoration of essential servics, such as hot meals, visiting, laundry and canteen, as soon as possible. Subsequent to the "lockdown" institutional officials were concerned with and attempted to ameliorate the maximum security precautions imposed at San Quentin as soon as possible consonant with safety to inmates and staff (CT 646). Beginning immediately after the "lockdown," inmate workers needed to provide essential services at the institution, were screened to see whether they could be safely released for operation of the services with safety. Throughout the period in question in this case inmates were screened to see if they could be safely released for work assignments as programs at the institution began operating (CT 646-647).

Initially, such workers who were not already in an honor or semi-honor unit were transferred to North Block when work assignments were received by them, although, throughout this period a certain number of inmate workers were housed in East Block. Conversely those without work assignments would be transferred to East Block. At, and immediately after, December 19, 1974, East Block housed primarily unassigned inmates. During 1975 its character was changed. It then primarily housed assigned workers (CT 647).

Throughout the period in question in this case institutional personnel used all formal and informal sources of information at their disposal to evaluate the temper of the institution with a view to reducing maximum security precautions when it appeared that this

could be done with safety. On at least one occasion a relaxation of security procedures had to be rescinded because of a new incident involving East Block.

Subsequent to December 19, 1974, violent incidents occurred at San Quentin involving East Block and weapons were found in the block (CT 647-648).

To operate the institution as safely and effectively as possible, overtime was required of institutional personnel and non-custodial personnel were assigned to custody positions (CT 648).

At this time institutional personnel concluded that because of the level of violence at San Quentin and prior experience with violence at San Quentin it would be necessary to make a complete reorganization of San Quentin structurally and procedurally to provide for its operation in maximum safety.

Because the conditions at San Quentin required maintenance of maximum security, operating procedures were formalized on a short-term basis, pending the long-term reorganization, to programs and staff at San Quentin. This short-term reorganization was memorialized in two memoranda, one bearing a date of January 12, 1975, and another undated, which took effect in the latter part of February 1975 (CT 648-649).

Throughout the period in question in this case, detailed planning was done at the institution, in conjunction with departmental headquarters in Sacramento, on a long-term structural and procedural reorganization at San Quentin. These plans for a long-term reorganization were approved and implementation was begun in approximately March of 1975 (CT 649).

What occurred in the period December 1974 through March 1975 at San Quentin may be summarized as follows:

a. A "lockdown" occurred on December 19, 1974. While conditions of a nature which would be defined as a "lockdown" as discussed above existed for some few days thereafter, institutional officials almost immediately began efforts to ameliorate the conditions incident to the "lockdown" insofar as possible consonant with safety of inmates and staff.

b. What occurred thereafter was what may be described as a short-term reorganization of San Quentin for its operation under maximum

security precautions pending a long-term reorganization.

c. After the lockdown, plans were immediately formulated for a long-term procedural and structural reorganization of San Quentin. These plans were formulated, approved and implementation was begun by March of 1975.

c. What occurred after the "lockdown" was not a continuation of the "lockdown" but a change of San Quentin, procedurally and structurally, into an institution with a higher degree of security (CT 649-650).

By mid-January 1975, a significant amount of out-of-cell time was provided for East Block inmates (CT 650).

The outside windows in East Block were being constantly broken by inmates. Institutional personnel did replace broken windows and make reasonable efforts to do so as promptly as possible (CT 650).

With respect to meals after the lockdown the following occurred:

a. After December 19, 1974, bag meals, two per day, were distributed to inmates in their cells. This continued with the exception of at least one hot meal on or about December 27 until December 31, 1974.

b. Thereafter one hot meal a day plus a sack lunch was served until January 12, 1975.

c. Thereafter two hot meals a day were served and

later a bag supplement was provided.

d. Providing meals was a lengthy process. Constant supervision was maintained enroute and during the meal and all inmates were searched entering and leaving the mess hall.

e. The hot meals referred to above were served in the mess hall (CT 651).

The warden consulted with appropriate officials with respect to the nutritional adequacy of meals provided inmates. The mess halls were cleaned continuously during the feeding operations and they were clean (CT 652).

Laundry operation was suspended for only approximately a week after December 19, 1974. Although some shortages were

experienced, deliveries of clean clothing were made to East Block on dates as set forth in the testimony of Sergeant Bruccoleri in his review of Exhibit BK.[3/] No severe shortage of clean clothing or towels is shown by the evidence in this case (CT 652).

No shortage of cleaning supplies is shown by the evidence in this case (CT 652-653).

Yard exercise for East Block inmates recommenced on approximately January 16, 1975 (CT 653).

Within a few days after December 19, 1974, showers were provided East Block inmates. Inmates were first showered in small groups under close custodial control. Special crews were created at

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3. A typed copy of the list attached to Exhibit BK is attached as appendix to the findings of fact (CT 670 et seq.).

the institution to facilitate showering. Showering was available approximately once a week and efforts were made to achieve a goal of at least two showers per inmate per week (CT 653).

Limited canteen was provided East Block by December 26, 1974, and modified canteen once-a-day per week by January 12, 1975, and full canteen by March 19, 1975. Initially after December 19, 1975, "shopping lists" from inmates were filled by institutional personnel. Subsequently groups of ten to fifteen inmates were escorted to the canteen. Subsequently canteen was available incident to meals (CT 653).

The evidence in this case shows no denial of access to courts because of any restrictions upon the use of the institutional law library (CT 654).

Inmates had available to them in their cells radios and books and, in

some instances, televisions. No denial of "entertainment" to East Block inmates is shown by the evidence in this case (CT 654).

Restoration of visiting received high priority at the institution. By December 25, 1974, there was restricted visiting. By December 29, 1974, visiting was allowed two days per week, three days per week by January 9, 1975, and five days a week visiting in March (CT 654).[4/]

There is no evidence that any plaintiff was deprived of the opportunity for schooling (CT 655).

Only such restrictions upon inmate activity were imposed as were necessary

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4. A summary of visiting records prepared by San Quentin staff is appended as an appendix to the findings of fact (CT 666, et seq.).

to maintain adequate security for the safety of inmates and staff (CT 655).

Petitioner Hayward was housed in East Block from November 13, 1974, to April 17, 1975, in Cell 1E93. Petitioner McNabb was housed in East Block from February 19, 1975, to May 7, 1975, in Cells 1E110, 3E73, and 3D70. Petitioner Brown was housed in East Block from January 22, 1975, to April 17, 1975, in Cells 2E106 and 2E12 (CT 655).

SUMMARY OF RESPONDENT'S ARGUMENT

I. Under the facts of this case, a five-month "lockdown," as properly defined, did not occur. At most, a short "lockdown" occurred followed by a reorganization, physical and procedural, of San Quentin to effectuate increased safety and security for inmates and staff.

II. Due process does not require procedures incident to actions as shown by the facts of this case.

III. Any possible requirements of procedural due process were satisfied under the facts of this case.

IV. The decision in this case does not conflict with the decision of another Court of Appeals.

ARGUMENT

I

A FIVE-MONTH "LOCKDOWN" DID NOT OCCUR.

There was no continued "lockdown" by prison staff after December 19, 1974. The specific finding of the district court was that the term "lockdown," as used in California, has no precisely described meaning. It is neither a term of art nor a term of law. As it has been used in cases, the term, at most, appears to refer to a period of total

deprivation. As found and set forth by the magistrate, the term in California may be utilized to describe a situation where security precautions are stricter than they were prior to the initial action with these greater restrictions not seen as permanent. The restrictions are not the total deprivations discussed in the cases cited by petitioners.

In this case what occurred was a short "lockdown," followed by a physical and procedural reorganization of San Quentin. Throughout the time period complained of various functions, such as communal feeding, canteen services and visiting, and certain operations, such as laundry, were reintroduced as quickly as possible consonnant with the safety of inmates and staff. The institution operated under maximum security conditions pending reorganization, such

conditions being ameliorated as quickly as possible. All available manpower at the institution was utilized for extended periods to provide security to permit the reinstitution of such matters as hot meals in the mess halls and showering. As shown by the evidence, actions of the administration at San Quentin were dictated not solely by the incident of December 19, 1974, but by the prior record of continuous and increasing levels of violence, and by the continuation of incidents after December 19, 1974, including an incident of an inmate being stabbed in East Block and the finding of weapons in East Block.

The cases cited by petitioners deal with so-called deadlocks or confinement to segregation for specific reasons. They do not deal with a situation such

as we have here where an institution is reorganizing to deal with continually increasing levels of violence and not responding to a single, isolated emergency. Moreover, evidence as found by the court shows continued and prompt efforts by the institution to reinstitute operations and programs, to reorganize facilities and units and, at the same time, to provide for the safety of inmates and staff alike.

II

A REORGANIZATION OF AN INSTITUTION TO A HIGHER DEGREE OF SECURITY DOES NOT REQUIRE THE APPLICATION OF PROCEDURAL DUE PROCESS.

What actually occurred at San Quentin subsequent to December 19, 1974, was an institutional reorganization, both physical and procedural, to allow the prison to function with a reasonable degree of safety. The cases of Meachum

v. Fano, 427 U.S. 15 (1976), and Montayne v. Haymes, 427 U.S. 236 (1976), limit the imposition of procedural due process to situations in which state law provides for rights of which the inmates have been deprived by institutional action. Thus, in these two cases, transfers between institutions did not require procedural due process protections when state law did not provide an inmate a right to be housed in any particular institution or to receive any particular procedures prior to transfer.

In an attempt to bring themselves within the ambit of Meachum and Montayne petitioners refer to Director's Rule No. 4402 and the Institutional Disturbance Control Plan. Appellants contend that Rule 4402 which requires each institution to have in effect a disturbance control plan and San

Quentin's Disturbance Control Plan establish throughout the correctional system a right to some particular conditions of confinement and character of custody prior to an administrative change.

First, section 4402 simply requires that a plan for handling emergencies exist at each and every institution. Such rule does not establish on the part of any inmate a right to any particular condition of confinement or any particular degree of custody. San Quentin's Disturbance Control Plan provides that in a disorder all inmates are to be confined to their cells. Efforts are made to isolate disorderly inmates and to return to normal operations as the emergency subsides and conditions permit. These provisions do not create for any inmate any substantive right

under state law or under departmental rules and regulations. They are simply policy statements; they do not establish a right to particular conditions or degrees of confinement. Further, there is no state created entitlement or expectation on the part of inmates to participate in the formalization or implementation of institutional security measures.

Administrative action by officials in San Quentin after December 19, 1974, may have been partly precipitated by the incidents of December 19, 1974. Those incidents triggered the decision that a reorganization of the institution was mandated. The evidence in this case shows extensive efforts throughout the Department of Corrections and at San Quentin prior to December 14, 1974, to formulate practices and programs to meet

rising levels of violence, including department-wide action in December 1973 and a subsequent series of partial and total "lockdowns" at San Quentin, with subsequent adjustments. The testimony established that San Quentin had never returned to the practices, procedures, operations and programs which existed prior to December 1973. Neither Director's Rule 4402 nor the San Quentin Distrubance Control Plan speak to these ongoing efforts to reduce growing levels of violence or reorganizational steps taken to meet the crisis. Petitioners failed to establish any "norm" to which they were entitled to be returned.

Petitioners were not entitled under state law or rules and regulations to any particular degree or character of custody. The Director's Rules and the Disturbance Control Plan do not

establish substantive rights and, even if they did, they relate solely to isolated emergencies and not to a general reorganization such as occurred in this case.

III

ANY DUE PROCESS REQUIRED WAS SATISFIED UNDER THE FACTS OF THIS CASE.

Inmates had actual notice from past experience that a "lockdown," as defined by petitioners, might result from an incident of the nature as occurred on December 19, 1974. Indeed, the evidence showed they not only expected it but encouraged it for their own safety. Further, the evidence showed that the administration utilized the inmate newspaper and the inmate radio station (KSQ) to repeatedly advise the inmates of the intentions of the administration

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with respect to operations and programs. Findings 52 and 53 (CT 645-646).

With respect to a "hearing" immediately after the "lockdown" of December 19, 1974, inmate workers were screened to see whether they could be safely released for the performance of services and, throughout the period in question, inmates continued to be so screened as more programs and services at the institution began operating (CT 646-647). Additionally, hearings concerning degrees and conditions of confinement were available within the California Department of Corrections by the Director's review of institutional action, the inmate classification process, and the inmate appeals' procedure (Finding No. 54, CT 646). The inmates also had available state habeas corpus remedies to challenge degrees and

conditions of confinement (Finding No. 55, CT 646).

Institutional personnel used, throughout the period in question, all formal and informal cources of information at their disposal to evaluate the temper of the institution with a view toward reducing maximum security measures when it appeared that this could be done with safety (Finding No. 63, CT 647).

Appellants have not articulated what "hearings" they would have required beyond those described above. Provisions for civilian review commissions have been generally disapproved. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).

It is difficult to see what more could be provided. Actions subsequent to December 19, 1974, were not dictated by the incident of December 19, 1974, except insofar as that incident constituted "the straw that broke the camel's back." Rather, it was one of a continuum of increasing levels of violence inside the institution, both gang and racially related, with which the administration at San Quentin had been attempting to cope for at least a year. Incidents continued after December 19, 1974. At least one of these was as the result of relaxation of security restrictions and occurred in East Block.

Under these circumstances, petitioners' call for a hearing amounts to a request for a hearing whenever increased security is imposed at an institution. Presumably at such hearing

inmates and staff would appear to contend whether increased security precautions were or were not necessary. Personnel at San Quentin, and particularly the Warden, are charged by law and under constitutional decisions with a duty to act to preserve the safety of inmates, staff and the general public. A hearing, such as suggested by appellants, under the facts of this case would be amorphous and severely impinge upon the statutory and constitutional duties of prison administrators.

IV

THE DECISION IN THIS CASE DOES NOT CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS.

Petitioners cite La Batt v. Twomey (7th Cir. 1975) 513 F.2d 641 and Hoit v. Vitek (1st Cir. 1974) 497 F.2d 598 to establish a conflict among the Circuits regarding the applicability of due

process in situations such as the facts of this case. However, both cases were decided prior to Meachum v. Fano (1976) 427 U.S. 215 and Montayne v. Haynes (1976) 427 U.S. 236. In particular La Batt v. Twomey, supra at 645 uses a "grievous loss" analysis.

La Batt v. Twomey, supra, held that the actions shown by that case did not implicate due process. Reference to possible requirements in some other situation is dicta.

Hoit v. Vitek, supra at 600 found no procedural due process violations. Any further reference is dicta and, in any event, the fact that inmates might properly seek damages and injunctive relief if confinement was in bad faith as a subterfuge for denial of prisoners' procedural rights does not mandate the procedure here argued for by petitioners.

Petitioners cite no authority post Meacham and Montayne contrary to the Ninth Circuits ruling. Under there circumstances no conflict between the Circuit Courts has been shown by petitioners.

CONCLUSION

For the foregoing reasons respondents respectfully request that the Petition for Writ of Certiorari be denied.

DATED: March 30, 1981

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ART HAYWARD, JR., et al., Plaintiffs, v. RAYMOND K. PROCUNIER, et al., Defendants.	CIVIL NO. C-75-0653 WAI MAGISTRATE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction of the Court is invoked under the United States Constitution, and particularly the provisions of the First, Eighth and Fourteenth Amendments thereto, and under the laws of the United States, particularly Title 42 of the United States Code, section 1983. Plaintiffs' claim for declaratory relief is based upon the provisions of Title 28 of the United States Code, sections 2201 and 2202. The Court has jurisdiction of this cause under the provisions of Title 28 of the United States Code, section 1343.

SUBSTANCE OF THE ACTION

This action arises out of incidents which occurred on December 19, 1974, and action by state authorities subsequent thereto which has been described as "lockdown". Plaintiffs' contentions are that the extent and duration of the "lockdown" and the nature and duration of the conditions of confinement subsequent to December 19, 1974, were such as to constitute a

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APPENDIX A

Art HAYWARD, Jr., Michael McNabb and Morris L. Brown, Plaintiffs/Appellants,

v.

Raymond K. PROCUNIER, Jiro J. Enomoto, Walter Britt, Robert M. Rees, L. H. Fudge, C. L. Swagerty, D. W. Smith and Don R. Weber, Defendants/Appellees.

No. 78-3701.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted July 9, 1980.

Decided Oct. 3, 1980.

Prisoners brought action for damages and declaratory injunctive relief alleging that five-month "lockdown" of the prison deprived them of their liberty without procedural due process and constituted cruel and unusual punishment. The United States District Court for the Northern District of California, William A. Ingram, J., rejected the prisoners' claims and they appealed. The Court of Appeals, Canby, Circuit Judge, held that prisoners' constitutional rights to procedural due process and to freedom from cruel and unusual punishment were not violated by five-month "lockdown" of the prison, in view of the state of emergency which existed at the prison.

Affirmed.

Constitutional Law ⇐272(2)
Criminal Law ⇐1213

Prisoners' constitutional rights to procedural due process and to freedom from cruel and unusual punishment were not violated by five-month "lockdown" of prison, in view of state of emergency which existed at prison. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amends. 8, 14.

Appeal from the United States District Court for the Northern District of California.

Before DUNIWAY, TANG and CANBY, Circuit Judges.

CANBY, Circuit Judge.

In this appeal we must decide whether state prisoners' constitutional rights to procedural due process and freedom from cruel and unusual punishment were violated by a five-month "lockdown"[1] of the prison. The district court held that there was no constitutional violation. We agree and affirm.

FACTS:

Between 1970 and 1974 California's San Quentin Prison became an increasingly turbulent institution. The rate of violent incidents more than tripled during this period, and the influence of prison gangs steadily grew. 1974 was a particularly violent year. There were 82 assaults with weapons and 12 killings, as well as 71 cases of possession of weapons and 2 attempted escapes. Prison officials responded to the problem by temporarily "locking down" the prison several times

1. "Lockdown" is not a term of art. It generally refers to a condition of abnormally heightened security during which prisoners are confined to their cells totally or for a much greater portion of the day than usual. As will be seen, the restrictive incidents of the lockdown in this case changed during the period it was in effect.

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in 1974; Department of Corrections officials even considered closing San Quentin.

On December 19, 1974, two men were killed in separate incidents of gang violence. Prison officials feared that the violence might spread. The warden decided that a state of emergency existed and, acting pursuant to § 4402 of the California Rules and Regulations of the Director of Corrections, he imposed a lockdown on the entire prison.

At first the prisoners were confined to their cells 24 hours a day and were served sack lunches twice a day in their cells. Gradually, however, the regimen was relaxed. Within two weeks the prisoners received one hot meal per day in the dining room. Two weeks later they received two hot meals per day and finally in June 1975, six months after the lockdown began, the normal routine of three hot meals per day was restored. Similarly, yard exercise and trips to the showers were forbidden entirely at the outset of the lockdown, but were gradually reintroduced. Showers were fully reintroduced by February 1975. Some yard exercise was permitted within a month after the lockdown began, and the normal exercise routine was restored by May. Of course a great many inmate privileges such as movies, school attendance and visitation were partially or wholly abrogated during the five to six months of the lockdown.

The plaintiffs in this action were residents of East Block, one of the four major housing units at San Quentin, during the lockdown. They brought this action on behalf of themselves and the class of East Block residents for damages and declaratory and injunctive relief under 42 U.S.C. § 1983. They do not argue that the initial decision to impose the lockdown was necessarily improvident; indeed, the record discloses that many inmates were urging the warden to lockdown the prison after the two killings on December 19, 1974. They do, however, urge that continuance of the lockdown for more than a short time without some sort of notice and hearing at which the inmates could participate deprived them of their liberty without procedural due process, in violation of the fourteenth amendment. The prisoners also argue that the lockdown, continuing as long as it did, constituted cruel and unusual punishment in violation of the eighth and fourteenth amendments. The district court rejected these claims and the prisoners appealed.

PROCEDURAL DUE PROCESS

In *Meachum v. Fano*, 427 U.S. 215, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976), and *Montanye v. Haymes*, 427 U.S. 236, 96 S.Ct. 2543, 49 L.Ed.2d 466 (1976), the Supreme Court held that state prisoners had not lost any liberty or property interest, and hence were not entitled to procedural due process, by being transferred to a less favorable prison within the same prison system. Crucial to these decisions was the court's conclusion that the relevant state statutes, regulations and customs did not give rise to any justifiable expectation on the part of prisoners that they would not be transferred for any reason or no reason. Had the state law been to the contrary, it was possible that inmates would have had a liberty interest in not being transferred which could not have been abridged without procedural due process.

The prisoners in this case argue that, unlike the inmates in *Meachum* and *Montanye*, they did have a legitimate expectation under California law and prison custom that they would not be subjected to a lockdown unless a certain specified condition—the existence of an emergency—was met. They argue that they were therefore entitled to a hearing before an impartial fact-finder at some point soon after the lockdown was imposed.

We have difficulty finding support for the plaintiffs' contentions in the California prison regulations or practices. Section 4402 of the Rules and Regulations of the Director of Corrections simply provides that "[e]ach institution head must have in effect at all times a plan, approved by the Director, for meeting emergencies, such as riots, strikes, attacks upon inmates, visitors or staff, explosions or fires, suicides or attempted suicides or accidental injuries to inmates or visitors and employees." The variety and inclusiveness of this list suggest that the regulation is not intended to impose fixed conditions upon the warden's exercise of his authority. In any event, it is undisputed that there were "attacks upon inmates" which led the warden to implement the prison's Disturbance Control Plan and impose the lockdown. We do not understand the prisoners to be seeking a hearing merely to determine whether in fact such attacks took place. They wish a hearing to determine whether the increased level of security represented by the lockdown was justified by the emergency. Yet nothing in the regulations nor, in our view, in the customs of the prison is sufficiently specific to create a justifiable expectation of any particular level of prison wide security. That omission distinguishes the present case from those in which prisoners were held to be entitled to procedural due process. We do not find here the equivalent of a statute conferring a particular benefit, such as good behavior time or parole, with a specification of conditions under which that benefit can be lost. *See Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). The regulations here do not purport to enumerate specific reasons for which a prisoner can be placed in solitary confinement and to require documentation of those reasons. *See Wright v. Enomoto*, 462 F.Supp. 397 (N.D.Cal. 1976), *aff'd mem.*, 434 U.S. 1052, 98 S.Ct. 1223, 55 L.Ed.2d 756 (1978). Nor are prisoners being subjected to treatment wholly outside the foreseeable consequences of criminal conviction, such as commitment to a mental institution in the absence of a mental disease or defect. *See Vitek v. Jones*, -- U.S. --, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980). Here we have only a regulation requiring a warden to have a plan for meeting emergencies, along with a non-exhaustive list of possible emergencies.

It is certainly true that in the ordinary course of events prisoners expect that there will be no lockdowns in the absence of an emergency, just as in *Meachum* and *Montanye* prisoners naturally expected that they would not be transferred in the absence of misconduct, "unless it be assumed that transfers are mindless events". 427 U.S. at 228, 96 S.Ct. at 2540. But the Supreme Court found that type of expectation to be too ephemeral to give rise to a due process liberty interest, and we think the same conclusion follows in the present case.

There is another fundamental defect in the procedural due process arguments of the prisoners, and it lies in the nature of the hearing they seek. In every case cited by plaintiffs or revealed by our research in which prisoners were found to be entitled to a due process hearing, the subject of that hearing was the fate of individual prisoners, and the facts to be examined dealt with their conduct or their condition. *See, e. g., Wolff v.*

McDonnell, supra; Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, supra; Wright v. Enomoto, supra. In this case, however, the facts in dispute are not those which would differentiate the plaintiffs from the general prison population and cause them to be subjected to distinctive treatment. The conduct of the plaintiffs is not in issue. Instead, the question to be decided is whether the degree of emergency justifies a continuation of the lockdown a determination involving a high degree of policy and prediction. *See Gilliard v. Oswald*, 552 F.2d 456, 459 (2nd Cir. 1977). To address this question, the plaintiffs urge us to fashion a hearing at which selected members of the inmate population can present their views on the advisability of a lockdown. Both the subject matter and the suggested procedure cause us to doubt that the Constitution requires any such hearing. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978); *Alaska Airlines, Inc. v. Civil Aeronautics Board*, 545 F.2d 194, 200 (D.C. Cir. 1976).

Plaintiffs rely on three cases involving procedural due process and lockdowns. All three were decided before *Meachum* and *Montanye, supra*, and in none of them was a due process hearing actually ordered. The case most supportive of plaintiffs is *Labatt v. Twomey*, 513 F.2d 641 (7th Cir. 1975). There the Court held that a nine-day lockdown did not implicate due process because it was short and in response to an emergency. The court stated, however, that in some cases of a general lockdown the Constitution would require that the prisoners be given "notice of the cause of the deprivation, the reasons for its continuation, and an opportunity to respond." *Id.* at 646. The second case, *Hoitt v. Vitek*, 497 F.2d 598 (1st Cir. 1974) is more equivocal. The court held that there was no procedural due process violation in a lockdown of several weeks' duration, but added that in the event of a long and unreasonable lockdown the prisoner could properly seek an injunction, or even damages if "the confinement was being continued in bad faith as a subterfuge for the denial of prisoners' procedural rights." *Id.* at 600. We do not necessarily read that language as an endorsement of plaintiffs' position but in any event we are not persuaded by it or by the dictum in *Labatt* that we should interpret the due process clause to require the type of hearing sought by the prisoners in this case. Our position is supported by *Gilliard v. Oswald*, 552 F.2d 456 (2d Cir. 1977) in which the court rejected a claimed right to hearing of 140 prisoners administratively confined to their cells because of a prison emergency arising from a series of assaults.

The third lockdown case upon which plaintiffs rely, *Johnson v. Anderson*, 370 F.Supp. 1373 (D.Del.1974) is also in accord with our views. There the court held that a lockdown of an entire cell block did not implicate procedural due process because the lockdown decision was "a rule change of general applicability affecting an entire class of prisoners. Since such a rule change is not directed at particular persons, individual prisoners are neither more acutely affected by it than other members of their class nor uniquely able to bring personal knowledge to bear on the appropriateness of its implementation." *Id.* at 1382. The same reasoning applies with even greater force to the lockdown of an entire prison.

We therefore hold that there is no due process right to the hearing sought by plaintiffs in this case. In so deciding we do not minimize the seriousness of a lockdown nor do we deny that administrative review of a lockdown decision might be desirable. *See McGruder v. Phelps*, 608 F.2d 1023 (5th Cir. 1979). We are simply unable to say that the Constitution dictates such a procedure.

EIGHTH AMENDMENT:

Prisoners are not left without any remedy against an unjustifiable or unduly oppressive lockdown. Severe conditions of confinement are subject to eighth amendment scrutiny, which plaintiffs have invoked in this proceeding. They claim that the lockdown constituted cruel and unusual punishment, and rely primarily on *Jefferson v. Southworth*, 447 F.Supp. 179 (D.R.I.1978), *aff'd*, 616 F.2d 598 (1st Cir. 1980). In that case, however, the district court was faced with a prison administration which was either unable or unwilling to deal with extreme conditions which the court had previously found to be cruel and unusual punishment. *Palmigiano v. Garrahy*, 443 F.Supp. 956 (D.R.I.1977), *aff'd*, 616 F.2d 598 (1st Cir. 1980). The Director of Corrections in *Jefferson* imposed the lockdown within a few weeks of the district court's decision in *Palmigiano* and apparently in response to it. There was, the district court found, no emergency necessitating the lockdown and the Director had announced his intention to continue the lockdown indefinitely. Neither the extreme conditions of *Palmigiano* nor the apparent bad faith of prison authorities in *Jefferson v. Southworth* find a parallel in our case.

Nor do the conditions imposed during the emergency lockdown at San Quentin fall within our ruling in *Spain v. Procunier*, 600 F.2d 189 (9th Cir. 1979). In *Spain* we affirmed a decision of a district court that confinement of six prisoners with an almost total absence of outdoor exercise was cruel and unusual punishment, and we upheld the court's order requiring at least one hour of such exercise per day, five days per week "unless inclement weather, unusual circumstances, or disciplinary needs made that impossible." *Id.* at 199. The present case, however, confronts us with the unusual circumstances reserved in *Spain*; this lockdown was in response to a genuine emergency. The measure was temporary and plaintiffs here were allowed approximately the minimum exercise mandated in *Spain* within a month after the imposition of the lockdown. Other restrictions were eased as the prison administration determined that the emergency permitted. These decisions are delicate ones, and those charged with them must be given reasonable leeway. *See Hoitt v. Vitek*, 497 F.2d 598, 601 (1st Cir. 1974); *Gilliard v. Oswald*, 552 F.2d 456, 459 (2nd Cir. 1977). The court below carefully reviewed the restrictions of the lockdown in light of the emergency at the prison and determined that they did not cross the eighth amendment line. We agree with that conclusion.

Affirmed.

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APPENDIX B

Closed

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ART HAYWARD JR., et al., Plaintiffs, v. RAYMOND K. PROCUNIER, et al., Defendants.	)	NO. C-75-0653-WAI O R D E R

The above-entitled action having come duly on for trial before the Honorable Owen E. Woodruff, Jr., United States Magistrate, and Findings of Fact and Conclusions of Law having been made and filed with the Court on February 16, 1978; and

Objections to said Findings of Fact and Conclusions of Law, pursuant to Local Rule 410(b), having been filed by plaintiffs on February 24, 1978, and defendants' brief in response having been filed on March 10, 1978; and

The Court having made a de novo review of the file as required by 28 U.S.C. §636(b)(1)(B),

IT IS HEREBY ORDERED that the said Findings of Fact and Conclusions of Law be amended to delete the citation of Cruz v. Skelton, 543 F.2d 86 (5th Cir. 1976) from Conclusion of Law No. 7, p. 26, ln. 21. As so amended, said Findings of Fact and Conclusions of Law are hereby approved and

FPS-SD-12-5-78

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adopted by the Court, and that defendants and each of them have judgment in accordance herewith.

Dated: September 14, 1978

WILLIAM A. INGRAM
United States District Judge

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APPENDIX C

denial of due process and the imposition of cruel or unusual punishment.

Defendants contend that the nature and extent of what has been described as a "lockdown" was not such as described by plaintiffs, that the nature and extent of conditions existent after December 19, 1974, were not such as to constitute a denial of due process or to be the imposition of cruel or unusual punishment.

It is undisputed that the actions of state officials on December 19, 1974, effected a change in the conditions of confinement of inmates incarcerated in the East Cell Block (the nature, extent and duration of such changes being a matter of dispute as set forth below). It is further undisputed that plaintiffs were not individually provided with any prior notice of the lockdown decision; that the plaintiffs were not given either prior to or immediately following imposition of what plaintiffs characterize as a lockdown a hearing or other opportunity to respond before an impartial board or official; that plaintiffs were not given an opportunity to cross-examine witnesses or to present witnesses, evidence or arguments; and that plaintiffs were not provided with counsel or counsel substitutes. The unavailability of a hearing and other procedural due process rights incident thereto does not include the ability of plaintiffs to pursue a state habeas corpus in connection with either the lockdown or the conditions of confinement incident thereto.

Further, the unavailability of a "hearing" does not include review of inmates' files prior to the release of workers subsequent to December 19, 1974, or the continuing classification process at San Quentin.

It is also undisputed that plaintiffs do not contend in this action than any procedural due process protection should

have preceded the imposition of what has been characterized as a "lockdown". Rather plaintiffs confine their procedural due process claim to the period following the imposition on December 19 of the "lockdown" decision.

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DISPUTED FACTUAL ISSUES

The necessity for the continuation of what has been characterized as a "lockdown" in terms of its extent and duration is in dispute between the parties to this case. The nature, extent, and duration of the conditions of confinement in East Block subsequent to December 19, 1974, are in dispute between the parties. These conditions of confinement include, but are not necessarily limited to, such items as: confinement to cells; broken windows; meals; clothing and towels; cleaning supplies; exercise; showers; canteen; schooling; law library; entertainment and visiting. It is also disputed by the parties as to whether the inmates at San Quentin had actual notice that a "lockdown" would result from incidents of December 19, 1974. It is further disputed between the parties that inmates at San Quentin were reviewed by prison officials concerning their security classification for immediate release as a worker and it is further disputed between the parties that the classification process at San Quentin was on-going during this period of time. It is further disputed between these parties that these "hearings", administrative appeal and the availability of state habeas corpus constitute a sufficient provision for review to satisfy any possible requirement of due process applicable to this case.

The case was tried to the Court commencing November 7, 1977, Robert A. Goodin of Heller, Ehrman, White and McAuliffe appearing as counsel for plaintiffs, and Mr. Kenneth Young of the California Attorney General's Office appearing as counsel for defendants. The Court having considered the evidence, argument and papers submitted to the Court for decision, the Court being fully advised now makes findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. Plaintiff Art Hayward was an inmate at East Block, San Quentin State Prison, in the County of Marin, State of California during the period October 9, 1974 through May 27, 1975. Plaintiff Hayward is presently residing in San Francisco, California, and has been discharged from custody. Trial Transcript (hereinafter "Tr.") Vol. I, p. 5, ln. 10-20, Exhibit BR-2.

2. Plaintiff Morris Brown was an inmate at East Block, San Quentin State Prison, in the County of Marin, State of California, during the period January 21, 1975 through April 17, 1975. Plaintiff Brown is currently residing in San Francisco and is currently on parole. Tr. Vol. I, p. 21, ln. 22 through p. 22, ln. 5, Exhibit BR-3.

3. Plaintiff Michael McNabb is an inmate in West Block, San Quentin State Prison, in the County of Marin, State of California. During the period February 19, 1974 through May 7, 1975, plaintiff Michael McNabb was an inmate in the East Block of San Quentin State Prison. Tr. Vol. III, p. 19, ln. 8-12, Exhibit BR-4.

4. Defendant J. J. Enomoto is presently Director of the California Department of Corrections. Joint Pretrial Conference Statement, p. 1.

5. Defendant George W. Sumner is presently Warden of San Quentin State Prison, in the County of Marin, State of California. Joint Pretrial Conference Statement, p. 1.

6. During 1974, East Block house "main line" inmates were those who were given security classifications of I or II. Inmates with a security classification of I are defined as "inmates who have demonstrated over a period of time that they are no threat to staff or other inmates". Inmates in category II are defined as "inmates who have not demonstrated that they

need special housing or are not ready for Category I". Tr. Vol. III, p. 58, ln. 5, p. 59, lin. 19, Exhibit 31.

7. During 1974, prior to December 19th of that year, prison routine for inmates in East Block began with a morning count to assure everyone's presence. Immediately thereafter, inmates were escorted in staggered groups to the Mess Hall for a hot breakfast. Following breakfast, those residents of East Block who were assigned to a prison job reported to work. Residents of East Block without job assignments were returned to their cells and stayed there the rest of the morning. At noon, all inmates were served another hot meal in the Mess Hall, following which assigned inmates returned to their jobs and non-assigned inmates were permitted to utilize the exercise and gymnasium facilities in San Quentin's lower yard until the time necessary to return for the evening count. At approximately 4:00 p.m. the evening count took place, and following the count East Block residents were escorted to the Mess Hall for a hot dinner.

After dinner inmates were permitted night movement as required for a variety of programs and entertainment, including night school, self-help programs, movies, etc. Following night movement, all residents of East Block, except those working on the night shift, were confined to their cells until breakfast.

In addition to the out-of-cell time reflected in the description of the East Block routine contained in finding 7 hereinabove, East Block residents also spent out-of-cell time in so-called "ducated" movement. "Ducated" movement consists of movement for specific purpose, e.g., dental, medical, visiting, classification hearing, etc., pursuant to a written order or "ducat". Tr. Vol. II, p. 9, ln. 15 through p. 12, ln. 7.

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8. During 1974, prior to December 19th of that year, showers for East Block residents were provided on a rotating basis, which typically resulted in a minimum of two showers per week for each inmate. Tr. Vol. II, p. 13, ln. 7-23.

9. During 1974, prior to December 19th of that year, at the time of showers, inmates were given a clean set of "white clothing", e.g., shorts, T-shirts, etc. Inmates were given an opportunity to exchange so-called "blue clothing", e.g., outer shirts and pants, once per week. Tr. Vol. II, p. 13, ln. 24 through p. 14, ln. 8.

10. During 1974, prior to December 19 of that year, cleaning supplies for cell cleaning activities were supplied in bulk to East Block weekly. These supplies were broken out and delivered upon request to inmates as needed. Tr. Vol. V, p. 50, ln. 16-25; Tr. Vol. II, p. 14, ln. 9-25.

11. During 1974, prior to December 19th of that year, residents of East Block also enjoyed a variety of privileges, including visiting rights, movie attendance, course and/or school attendance, and daily use of the canteen from which they could purchase food and personal items. Tr. Vol. II, p. 11, ln. 20 through p. 12, ln. 7; p. 15, ln. 4-17.

12. Prior to December 19, 1974, the California Department of Corrections, and San Quentin State Prison, experienced increasing levels of violence. Defense Exhibits: 0-1 through 165; R; S-1, 2, 3, 4, 5, 6; T; U and V. Defense Testimony: Britt - III, 129-130, 131-133.

13. Between 1970 and 1974 the level of incidents within the Department of Corrections increased from a rate of 1.36 to 4.30 per 100 average institution population. Defense Exhibits: R; T (p. 1-2).

14. Much of the violence within the Department of Corrections was gang and/or racially oriented. Defense

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Exhibits: R; S-1, 2, 3, 4, 5, 6, (pp. 2 & 3); T; Y-3 (pp. 15-17, 18). Defense Testimony: Britt III, 135-142, IV, 46-47.

15. During the year prior to December 19, 1974, San Quentin experienced increasing levels of violence. Defense Exhibits: 0-1 through 165; R; S-1, 2, 3, 4, 5, 6 (p. 3); T; U and V (Rpts. from 1/2/74 through 6/1/75). Defense Testimony: Hayward Deposition V, 140-141.

16. Between 1970 and 1974 the incident rate at San Quentin went from 1.99 to 6.28. Defense Exhibit: R.

17. A major portion of the incidents at San Quentin were gang and/or racially oriented. Defense Exhibits: 0-1 through 165; R; S-1, 2, 3, 4, 5, 6 (p. 3); T; U and Y-3 (pp. 15-17, 18). Defense Testimony: Britt - III, 136, 141-142, IV, 46-47, 49-50, 82-150; McNabb Deposition - VI, 141-142.

18. During 1974 San Quentin experienced 197 incidents including 82 assaults with weapons (12 fatalities), 7 fights, 71 possession of weapons and 2 attempted escapes. Defense Exhibits: 0-1 through 165; P (BB-1); Q-16 through 170; R; S-1, 2, 3, 4, 5, 6 (p. 3); U and V (Rpts. 1/2/74 through 6/1/75).

19. Different gangs tend to predominate or control different institutions within the Department of Corrections. Defense Exhibits: S-1, 2, 3, 4, 5, 6 (pp. 2 & 3); T and Y-3 (pp. 15-17, 18). Defense Testimony: Britt - III, 136, 138-139.

20. This factor, and rivalries between gangs, interfers with the ability to transfer inmates from one institution to another. Defense Testimony: Britt - III, 135-136, 138-141; IV, 51-53.

21. It is difficult to ascertain the membership of the gangs. Defense Exhibits: S-1, 2, 3, 4, 5, 6. Defense Testimony: Britt - III, 143-145; IV, 50-51, 81-82, 150-152.

22. Gang influence is pervasive, instructions are known to have been passed from leaders to members from segregation units and from one institution to another. Defense Exhibits: Y-3 (pp. 15-17, 18). Defense Testimony: Britt - IV, 71-74, 150-152.

23. Penalties imposed by the gangs are generally death. Defense Testimony: Britt - IV, 46, 48-49.

24. Gang influence spreads beyond immediate membership. Defense Exhibits: S-1, 2, 3, 4, 5 and 6. Defense Testimony: Britt - IV, 82-83.

25. Gang oriented incidents have expanded to become racial in nature. Defense Exhibits S-1, 2, 3, 4, 5 and 6; Y-3 (p. 17). Defense Testimony: Britt - III, 142-143.

26. At the time pertinent to this case the major gangs at San Quentin were the Aryan Brotherhood ("AB"), the Black Guerilla Family ("BGF"), and the Mexican Mafia ("EME"). Defense Exhibits: S-1, 2, 3, 4, 5 and 6 (p. 3); and T. Defense Testimony: Britt - III, 135.

27. As used within the California Department of Corrections the term "lockdown" has no readily defined meaning. The term as used by the Department of Corrections may be generally defined as:

a. action, affecting all or part of a prison, in which, as a response to an incident or incidents of violence, inmates are returned to their cells;

b. the term is also used to describe the state of affairs following the initial action where security measures are maintained in excess of those extant prior to the "lockdown" but they are not seen as permanent revisions of pre-existing procedures.

Defense Testimony: Britt - IV, 59-61, 61-63, 152-153, 154-155.

28. The duration of a "lockdown" may not be judged from the continued usage of the term since:

a. increased security restrictions may be permanently adopted in an effort to control violence;

b. security restrictions may be relaxed but have not either become permanent or returned to pre-existing levels;

c. new incidents of violence may necessitate a new "lockdown" and subsequently increased security measures.

29. The term "lockdown" is only useful to describe the initial action, responsive to an act or acts of violence, in which inmates in all or part of an institution are confined to their cells. Thereafter conditions of confinement must be specifically analyzed at any particular point in time and may not be deemed to be of a set character by reason of the use of the term "lockdown".

30. In December of 1973 San Quentin, together with other major institutions, was the subject of a departmental "lockdown" as part of an effort to control increasing violence within the correctional system. Defense Exhibits: S-1, 2, 3, 4, 5 and 6; T; AB; AC and AD. Defense Testimony: Britt - III, 133, IV, 54-55. Weber - V, 18-19.

31. In connection with this "lockdown" new categories were created, all inmates were screened with respect to violence potential, and a program of increased security measures, with particular emphasis upon weapons control, was instituted. Defense Exhibits: S-1, 2, 3, 4, 5 and 6; T; V (Rpts. 1/2/74 through 6/1/75); AA; AB; AC and AD.

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Defense Testimony: Britt - IV, 56-57, 65-66, 83-84. Weber - V, 18-19.

32. The accompanying departmental reorganization affected San Quentin's population in terms of size and character. Defense Exhibits: S-1, 2 (p. 4), 3, 4, 5 (p. 2) and 6; Y-3 (p. 17); AF. Defense Testimony: Britt - IV, 57-59.

33. San Quentin received from other portions of the system inmates who were, or potentially were, disruptive. Defense Exhibits: S-1, 2 (p. 4), 3, 4, 5 (p. 2) and 6; Y-3 (p. 17). Defense Testimony: Britt - IV, 57-59.

34. This factor, together with gang rivalries, meant that San Quentin's violence problems had to be worked out at that institution. Defense Testimony: Britt - III, 135, 136, 138-141; IV, 51-53, 57-59.

35. San Quentin's population remained at a high level. Defense Exhibits: S-1, 2 (p. 4), 3, 4, 5 (p. 2) and 6; AF.

36. There were subsequent "lockdowns" at San Quentin during 1974. Conditions at San Quentin never returned to the pre-December 1973 format. Defense Exhibits: S-1, 2, 3, 4, and 5; T; AB; AC; AD and AE. Defense Testimony: Britt - IV, 61-70.

37. During 1974 several suggestions were made concerning operations at San Quentin and several methods to control violence were attempted. Defense Exhibits: S-1, 2, 3, 4, 5 and 6; T; V (Rpts. 1/2/74 through 6/1/75); W; X; Y-1, 2 and 3; Z; AA; AB; AC; AD and AE. Defense Testimony: Britt - IV, 61-70, 75-81, 83-85.

38. During 1974 the major option appeared to be closing the institution. Defense Exhibits: AG-6 and AG-9. Defense Testimony: Britt - IV, 85, 125.

39. Despite measures taken to prevent violence, during

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1974, 170 incidents occurred at San Quentin, including 82 assaults with weapons with 12 fatalities for an incident rate of 6.28 compared with 1.99 in 1970. Defense Exhibits: O-1 through 165; P (BR-10); Q-167 through 170; R; S-1, 2, 3, 4, 5 and 6; U and V (Rpts. 1/2/74 through 6/1/75).

40. On December 19, 1974, residents of East Block, as were all other inmates at San Quentin, were placed in lock-down status. The imposition of lockdown status on the Prison represents the implementation of the institution's disturbance control plan based on the occurrence of one of several enumerated types of emergency. The authority for imposing a lockdown and the enumeration of the types of emergency for which it is authorized is contained in Section 4402 of the Rules and Regulations of the Director of Corrections of the State of California. Tr. Vol. III, p. 63, ln. 18 - p. 64, ln. 1; Exhibit 1; Tr. Vol. II, p. 4, ln. 10-25; Exhibit 35.

41. On December 19, 1974, two incidents of violence occurred, one in the South Dining Hall and the second, shortly thereafter, in the lower yard. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 86-96. Weber - V, 19-23.

42. These incidents arose from a history of violence between the Black Guerilla Family and the Mexican Mafia. Defense Exhibit: P(BR-1). Defense Testimony - Britt - V, 163.

43. Two inmates were killed in these incidents. Defense Exhibit P (BR-1).

44. Although consideration was given after the first incident to the possibility that the violence could be contained, the nature of the second incident showed a potential for widespread violence. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 93-94, 94-96. Weber - V, 22-23. Nyberg - V, 83.

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45. The initial incident involved gang members housed in segregation units. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 92-93, 94 and 95.

46. The second incident involved the general population and appeared to be a gang attack on non-gang members. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 94-95, V, 5-6. Nyberg - V, 83.

47. The gangs and inmates involved were of different racial origins. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 86.

48. The incidents held the potential for racial violence. Defense Exhibit: P (BR-1). Defense Testimony: Britt - V, 5-6.

49. The decision to "lockdown" the institution was made in light of the two incidents of violence of December 19, 1974, their nature and the background of violence at San Quentin. Defense Exhibit: P (BR-1). Defense Testimony: Britt - IV, 94-96.

50. The decision to place San Quentin on lock down status on December 19, 1974 was made by the then-Warden Kenneth Britt. In imposing the lock down status, prison authorities acted pursuant to Section 4402 of the California Rules and Regulations of the Director of Corrections of the State of California and San Quentin's disturbance control plan promulgated pursuant thereto. The decision to impose a lock down on San Quentin on December 19, 1974, represented a judgment by Warden Britt that a state of emergency existed at San Quentin on December 19, 1974. Tr. Vol. III, p. 62, ln. 10 - p. 63, ln. 17; p. 64, ln. 2-18; Exhibit 1; Tr. Vol. II, p. 4, ln. 10-25; Exhibit 35; Tr. Vol. IV, p. 154, ln. 1 - p. 155, ln. 16.

51. None of the named plaintiffs was in any way involved in or responsible for the altercation on December 19, 1974, which precipitated the lock down which commenced on that date. Further, of the class which these plaintiffs represent pursuant to this Court's order of October 19, 1977, the only members who were in any way involved in or responsible for the altercation which occurred on December 19, 1974, and which precipitated the lock down which commenced on that date are those identified in defendants' response to plaintiffs' Interrogatory 20, at page 114, line 1, through page 116, line 19, of defendants' consolidated response to plaintiffs' first set of interrogatories. Tr. Vol. III, p. 92, ln. 14 - p. 95, ln. 20; Tr. Vol. II, p. 45, ln. 10-16.

52. Inmates at San Quentin had prior notice that incidents of this sort would result in a "lockdown" because of prior lockdowns which had occurred at San Quentin in response to incidents of violence. Defense Testimony: Britt IV, 61-63, 92. Weber - V, 22. Nyberg - V, 83. Hayward Deposition - V, 139-140.

53. Subsequently, inmates were periodically given notice of the nature and extent of security procedures at San Quentin and the extent to which various programs were available to them.

a. Broadcasts were made over KSO News, a regularly scheduled broadcast. This program, and others, was available in the cells via an "intercom" system using earphones. At least 70% of the inmates in East Block had this available.

b. The San Quentin Newspaper, intended to provide such information, was delivered to

East Block and was either available to them incident to meals or was delivered to the cells.

Defense Exhibits: AG-1 (p. 3); AW 1, 2 and 3; AX. Plaintiffs' Exhibits: PX 32. Defense Testimony: Britt - IV, 103-105. Nyberg - V, 83-84. Gard - V, 124-127. Hayward Deposition - V, 145-148. Interrogatories V, 151, 152. Worster - VI, 57-59, 70-71. Bolton - VII, 6-8. Hahn - VII, 11-14.

54. Hearings concerning degree and conditions of confinement are and were available within the California Department of Corrections by the Director's review of institutional action, the inmate classification process and the inmate appeals procedure. Defense Testimony: IV, 141-142; V, 10-11, 31; VI, 33-34, 34-36, and 93. Plaintiffs' Exhibit: PX 1.

55. If departmental remedies are unavailing, inmates have state habeas corpus with which to challenge degree and and conditions of confinement.

56. Immediately after the "lockdown", priority was given by institutional officials to the restoration of essential services such as hot meals, visiting, laundry and canteen as soon as possible. Defense Exhibits: AG-1 (p. 3) and AH. Defense Testimony: Britt - IV, 97-103, 117.

57. Subsequent to the "lockdown" institutional officials were concerned with and attempted to ameliorate the maximum security precautions imposed at San Quentin as soon as possible consonant with safety to inmates and staff. Defense Exhibits: AG-1 (p. 3) and AH. Defense Testimony: Britt - IV, 97-103, 117.

58. Beginning immediately after the "lockdown", inmate workers needed to provide essential services at the institution, were screened to see whether they could be

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safely released for operation of the services with safety. Defense Exhibits: AG-1 (p. 3); AG-6 and AG-8. Defense Testimony: Britt - IV, 97-98, 117.

59. Throughout the period in question in this case inmates were screened to see if they could be safely released for work assignments as programs at the institution began operating Defense Exhibits: AG-1 (p. 3); AG-6 and AG-8. Defense Testimony: Britt - IV, 97-98, 169-170. Weber - V, 38, 39-40. Worster - VI, 32-33. Hahn - VII, 73.

60. Initially, such workers who were not already in an honor or semi-honor unit were transferred to North Block when work assignments were received by them, although, throughout this period a certain number of inmate workers were housed in East Block. Defense Exhibits: AG-3, AG-5, AG-6, AG-7, AG-8, AI-1 (pp. 1, 2) and AJ. Defense Testimony: Hayward Deposition - V, 148-149. Worster - VI, 34. Hahn, VII - 26.

61. Conversely those without work assignments would be transferred to East Block. Defense Exhibits: AG-3, AG-5, AG-6, AG-7, AG-8, AI-1 (pp. 1 & 2) and AJ. Defense Testimony: Hayward Deposition - V, 148-149. Worster - VI, 34.

62. At, and immediately after, December 19, 1974, East Block housed primarily unassigned inmates. During 1975 its character was changed. It then primarily housed assigned workers. Defense Testimony: VI, 40-41; VII, 26.

63. Throughout the period in question in this case institutional personnel used all formal and informal sources of information at their disposal to evaluate the temper of the institution with a view to reducing maximum security precautions when it appeared that this could be done with safety. Defense Exhibit: AG-1 (p. 3). Defense Testimony: Britt - IV, 96-97, 103, 113-117, 143-144. Weber - V, 23-26. Worster - VI, 56-57.

64. On at least one occasion a relaxation of security procedures had to be rescinded because of a new incident involving East Block. Defense Exhibit: Q-184 (BR-1). Defense Testimony: Britt - IV, 118-120. Worster - VI, 52-54. Hahn - VII, 26-27.

65. Subsequent to December 19, 1974, violent incidents occurred at San Quentin involving East Block and weapons were found in the Block. Defense Exhibits: Q-167 through 234, particularly sub-numbers: 172, 175, 186, 194, 206, 220, 221, 223 (BR-1); [1] V (Rpts. 1/2/74 through 6/1/75); AG-6, AI (pp. dated 12/31/74, 1/4/75) and BA-1 through 4 (particularly dates of 12/31/74, last page of BA-1, 3/1/75, 3/4/75). Defense Testimony: Britt - IV, 118-120; V, 14-15. Worster - VI, 52-54, 55. Riley - VI, 124-126. Hahn - VII, 26-27, 44, 81.

66. To operate the institution as safely and effectively as possible, overtime was required of institutional personnel and non-custodial personnel were assigned to custody positions. Defense Exhibits: AG-1 (3), AG-2, AG-3, AG-5, AH and AI-1. Defense Testimony: IV, 100, 124; V, 26-27, 29; VI, 75, 98.

67. At this time institutional personnel concluded that because of the level of violence at San Quentin and prior experience with violence at San Quentin it would be necessary to make a complete reorganization of San Quentin structurally and procedurally to provide for its operation in maximum safety. Defense Exhibits: AG-1 (p. 3), AG-2, AG-3 and AG-6. Defense Testimony: Britt - V, 120-124, 125-126, 156-163. Nyberg - V, 72-82, 85. Shepherd - VI, 9-26.

68. Because the conditions at San Quentin required maintenance of maximum security, operating procedures were

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[1] Exhibit explained by testimony VI, 67-69. Correlation of 103b cards (BR-1) with incident reports (Q-167-234) was prepared by Attorney General Staff. It is attached hereto as an appendix.

formalized on a short term basis, pending the long-term reorganization, to reorganize programs and staff at San Quentin. Defense Exhibits: AG-1 (p. 3), AG-3, AG-7, AG-8, AH and AI-1 and 2. Defense Testimony: Britt - IV, 120-124, 156-163.

69. This short term reorganization was memorialized in two memoranda, one bearing a date of January 12, 1975, and another undated, which took effect in the latter part of February, 1975. Defense Exhibits: AG-1 (p. 3), AG-3, AG-7, AG-8, AG-9, AH, AI-1 and 2 (and compare visiting dates, Ex. BP) and AJ. Defense Testimony: Britt - IV, 120-124. Weber - V, 27-31. Worster - VI, 54-55. Hahn - VII, 23-25.

70. Throughout the period in question in this case, detailed planning was done at the institution, in conjunction with departmental headquarters in Sacramento, on a long-term structural and procedural reorganization at San Quentin. Defense Exhibits: AG-1 (p. 3), AG-2, AG-3, AG-4, AG-6, AG-7, AG-8, AG-9, AK, AL, AM, AN and AO. Defense Testimony: Britt-IV, 126-132. Nyberg - V, 72-82, 85. Shepherd - VI, 9-17.

71. These plans for a long-term reorganization were approved and implementation was begun in approximately March of 1975. Defense Exhibits: AF, AG-6, AP, AQ, AR, AS-1 through 9, AT, AU and AV. Defense Testimony: Britt - III, 125-126, 130-132. Nyberg - V, 72-82. Ingram - V, 100-101. Thomas - V, 105-111. Shepherd - VI, 9-17, 17-20, 28-29. Worster - VI, 38-45, 45-46. McHenry - VI, 101-103. Kesner - VI, 107-108, 112-113. Hahn - VII, 16-17, 18-22.

72. What occurred in the period December, 1974, through March, 1975, at San Quentin may be summarized as follows:

a. A "lockdown" occurred on December 19, 1974. While conditions of a nature which could be defined as a "lockdown" as discussed above existed for some few days thereafter,

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institutional officials almost immediately began efforts to ameliorate the conditions incident to the "lockdown" insofar as possible consonant with safety of inmates and staff.

b. What occurred thereafter was what may described as short-term reorganization of San Quentin for its operation under maximum security precautions pending a long-term reorganization.

c. After the lockdown, plans were immediately formulated for a long-term procedural and structural reorganization of San Quentin. These plans were formulated, approved and implementation was begun by March of 1975.

d. What occurred after the "lockdown" was not a continuation of the "lockdown" but a change of San Quentin, procedurally and structurally, into an institution with a higher degree of security.

73. By mid-January, 1975, a significant amount of out-of-cell time was provided for East Block inmates. Defense Exhibits: AH, AI-1 and AJ. (See findings relating to meals, yard exercise, showers and visiting. See also entries relating to visits, medical and dental appointments, etc., in Ex. AY.)

74. The outside windows in East Block were being constantly broken by inmates. Institutional personnel did replace broken windows and made reasonable efforts to do so as promptly as possible. Defense Exhibits: BC, BD and BE. Defense Testimony: Britt - IV, 133-136, 149-150. Weber -

31-32. Hayward Deposition - V, 141, 145. Interrogatories V, 152-153. Shepherd - VI, 21-25, 26, 27. Worster - VI, 51. Riley - VI, 124-126. Hahn - VII, 43-44.

75. With respect to meals after the lockdown the following occurred:

a. After December 19, 1974, bag meals, two per day, were distributed to inmates in their cells. This continued with the exception of at least one hot meal on or about December 27, until December 31, 1974.

b. Thereafter one hot meal a day plus a sack lunch was served until January 12, 1975.

c. Thereafter two hot meals a day were served and later a bag supplement was provided.

d. Providing meals was a lenghty process. Constant supervision was maintained enroute and during the meal and all inmates were searched entering and leaving the mess hall.

e. The hot meals referred to above were served in the mess hall.

Defense Exhibits: AG-1 (p. 4), AG-4, AG-7, AH (pp. 11, 12-12A), AI-1 (pp. 3, 4-5), AJ, AY (pp. dated 1/2/75, 1/3/75, 1/9/75, 1/21/75), AZ (pp. dated 12/19/74, 12/29/74, 1/1/75, 1/4/75, et.seq.), [2] BA-1 (pp. dated 12/26/74 and 12/27/74), [3] BA-2 (pp. dated 1/12/75, 1/13/75, 1/14/75, 1/15/75, 1/16/75, 1/19/75, 1/21/75, 1/22/75, 1/24/75, 1/26/75), BA-3 (pp. dated 2/3/75, 2/16/75, 2/23/75, 2/24/75, 2/27/75, 2/28/75), BA-4 (pp. dated, 3/1/75. 3/2/75, 3/4/75, 3/18/75). BF, BG, BH-1

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[2] Exhibit explained by testimony VI, 61-62.

[3] Exhibit explained by testimony VI, 88, et. seq.

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& 2, BI-1 & 2 and BV. Defense Testimony: Britt - IV, 99-101, 136-137, 146-148. Beckman - V, 89-94, 97-98. Thomas, V, 104-111, 111-114, 119-120, 120-122. Worster - VI, 46-48, 77, 84-85. Kennedy - VI, 91-92, 95. Kesner - VI, 109-110, 111-112, 114. Riley - VI, 121-122, 122-123, 130-131, 135-137, 138. McNabb Deposition - VI, 140, 142-143. Brown Deposition - VI, 145-151, 153. Hahn - VII, 27-28, 29, 30-33.

76. The warden consulted with appropriate officials with respect to the nutritional adequacy of meals provided inmates. Defense Testimony: Britt - IV, 136-137. Beckman - V, 90.

77. The mess halls were cleaned continuously during the feeding operations and they were clean. Defense Testimony: Thomas - V, 114-115. Kesner - VI, 110-111.

78. Laundry operation was suspended for only approximately a week after December 19, 1974. Defense Exhibits: AH (p. 11) and BK-1 through 3 [4/] Defense Testimony: Britt - IV, 137. Bruccoleri - V, 55-63, 64-65, 69-70.

79. Although some shortages were experienced, deliveries of clean clothing were made to East Block on dates as set forth in the testimony of Sargeant Bruccoleri in his review of Exhibit BK. Defense Exhibits BK-1 through 3. Defense Testimony: Bruccoleri - V, 57-62.

80. No severe shortage of clean clothing or towels is shown by the evidence in this case. Defense Exhibits: BK-1 through 3. Defense Testimony: Bruccoleri - V, 55-63, 64-65. Riley - VI, 117-119. Brown Deposition - VI, 151-152. Hahn - VII, 41-42.

81. No shortage of cleaning supplies is shown by the

[4/] A typed copy of the list attached to Exhibit BK is attached hereto as an appendix.

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evidence in this case. Defense Exhibit: BJ. Defense Testimony: Bruccoleri - V, 49, 51-54, 55, 67-68. Shepherd - VI, 25-26. Riley - VI, 123-125. Hahn - VII, 42-43.

82. Yard Exercise for East Block inmates recommenced on approximately January 16, 1975. Defense Exhibits: AJ, AY (p. dated 1/16/75), AH and AI-1. Defense Testimony: Worster VI, 51-52. Kesner - VI, 111-112. Riley - VI, 122, 130-131. Hahn - VII, 33-35, 79-80.

83. Within a few days after December 19, 1974, showers were provided East Block inmates. Inmates were first showered in small groups under close custodial control. Special crews were created at the institution to facilitate showering. Showering was available approximately once a week and efforts were made to achieve a goal of at least two showers per inmate per week. Defense Exhibit: AH (pp. 9, 11, 15). Defense Testimony: Britt - IV, 138, 144-145. Worster - VI, 50-51, 85-87. Riley VI, 115-117, 127-129, 131-132, 135-137. McNabb Deposition - VI, 139-140. Brown Deposition - VI, 144-145. Hahn - VII, 39-41.

84. Limited canteen was provided East Block by December 26, 1974, and modified canteen once-a-day per week by January 12, 1975, and full canteen by March 19, 1975. Initially after December 19, 1975, "shopping lists" from inmates were filled by institutional personnel. Subsequently groups of ten to fifteen inmates were escorted to the canteen. Subsequently canteen was available incident to meals. Defense Exhibits: AG-7, AH (pp. 11, 14), AI-1 (pp. 3,8), AJ, AZ (pp. dated 1/3/75, 1/4/75), BF, BG, BL and BM. Defense Testimony: Bruccoleri - V, 49, 53-55, 67-68. Hayward Deposition - V, 145. Worster - VI, 48-49, 85-86. Riley - VI, 119-120, 135-137. Hahn - VII, 35-36.

85. The evidence in this case shows no denial of access

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to courts because of any restrictions upon the use of the institutional law library. Defense Exhibits: AH(pp. 11, 16), AI-1 (pp. 3, 9), BB-1 & 2 [5], BO and BN. Defense Testimony: Hayward Deposition - V, 137-139. Interrogatories - V, 152. McHenry - VI, 97-101. McNabb Deposition - VI, 143. Brown Deposition - VI, 152, 153. Hahn - VII, 36-38.

86. Inmates had available to them in their cells radios and books and, in some instances, televisions. Defense Testimony: Hayward Deposition - V, 145-148. Interrogatories - V, 151, 152. McNabb Deposition - VI, 142.

87. No denial of "entertainment" to East Block inmates is shown by the evidence in this case.

88. Restoration of visiting received high priority at the institution. By December 25, 1974, there was restricted visiting. By December 29, 1974, visiting was allowed two days per week, three days per week by January 9, 1975, and five days a week visiting in March. Defense Exhibits: AG-1 (p. 3), AG-3, AG-7, AH (pp. 11, 13), AI-1 (pp. 3, 7), AY (p. dated 1/9/75), AZ (pp. dated 12/24/74, 12/25/74, 12/23/74, 12/25/74), BA-2 (pp. dated 1/7/75, 1/11/75, 1/12/75, 1/13/75, 1/19/75, 1/26/75, 1/27/75), BA-3 (pp. dated 2/1/75, 2/2/75, 2/16/75) BA-4 (p. dated 3/10/75), BF, BG, BP [6] and BQ. [7] Defense Testimony: Britt - IV, 99-101, 137-138. Nyberg - V, 72-82, 85. Interrogatories - V, 155. Worster - VI, 66-67. Kennedy - VI, 92-93, 93-94. McNabb Deposition - VI, 141. Brown Deposition - VI, 152-153. Hahn - VII, 38-39.

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[5] Exhibit explained by testimony VI, 62-64

[6] Exhibit explained by testimony VI, 64-66. A summary of these records prepared by San Quentin Staff is appended hereto as an appendix.

[7] See Worster testimony for explanation.

89. There is no evidence that any plaintiff was deprived of the opportunity for schooling. Defense Testimony: V, 154; VI, 141, 153.

90. Only such restrictions upon inmate activity were imposed as were necessary to maintain adequate security for the safety of inmates and staff. Defense Testimony: Britt - IV, 99-103, 154; V, 3-5.

91. Plaintiff Hayward was housed in East Block from November 13, 1974, to April 17, 1975, in Cell 1E93. Defense Exhibits: BR-4, BU-1. (See VI, 67-69 for explanation of exhibits.)

92. Plaintiff McNabb was housed in East Block from February 19, 1975, to May 7, 1975, in Cells 1E110, 3E73, and 3D70. Defense Exhibits: BR-3 and BU-2. (See VI, 67-69 for explanation of exhibits.)

93. Plaintiff Brown was housed in East Block from January 22, 1975, to April 17, 1975, in Cells 2E106 and 2E12. Defense Exhibits: BR-2 and BT. (See VI, 67-69 for explanation of exhibits.)

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CONCLUSIONS OF LAW

1. The due process requirements of the Fourteenth Amendment are inapplicable to this case. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Gilliard v. Oswald, 552 F.2d 456 (2nd Cir. 1977), rehearing denied, 557 F.2d 359; Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); Potter v. Clark, 497 F.2d 1206 (7th Cir. 1974); Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974).

2. Due process does not require a hearing prior or subsequent to actions by prison authorities such as were taken on December 19, 1974, by the prison administration at San Quentin. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Gilliard v. Oswald, 552 F.2d 456 (2nd Cir. 1977), rehearing denied, 557 F.2d 35[illegible] Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); Potter v. Clark, 497 F.2d 1206 (7th Cir. 1974); Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974); Hodges v. Klein, 421 F.Supp. 1224 (D.N.J. 1976).

3. The federal Constitution does not require that subsequent to actions such as were taken by the San Quentin Administration on December 19, 1974, a hearing concerning continuation of maximum security precautions be reviewed by a civilian body outside the Department of Corrections. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).

4. The actual notice to inmates of the likelihood of a "lockdown" after a violent incident, the notice to inmates provided by the San Quentin administration concerning the extent and duration of security precautions and consequent limitations on programs, the contacts with inmates by prison

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staff concerning the temper of the institution, the individual screening of inmate files, the on-going departmental classification process, the inmate appeal process, and the availability of state habeas corpus more than adequately provide for any incidents of due process which might be held applicable to a situation such as is involved in this suit. Cooper v. Riddle, 540 F.2d 731 (4th Cir. 1976).

5. In a situation such as this where changed programs, policies and security measures were applied to inmates as a whole, a hearing concerning such changes is not required by the Fourteenth Amendment. Meachum v. Fano, 427 U.S. 215 (1976); Montayne v. Haymes, 427 U.S. 236 (1976); Moody v. Daggett, 429 U.S. 78 (1976).

6. Under the facts of this case no denial of access to court in violation of the federal Constitution is shown. Phillips v. Anderson, 386 F.Supp. 371 (E.D. Okla. 1974).

7. The state has no Eighth Amendment obligation to provide prisoners with opportunities to obtain education, attend vocational school or entertainment. Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); Cruz v. Skelton, 543 F.2d 86 (5th Cir. 1976); Madeau v. Helgemoe, 423 F.Supp. 1250 (D.C. N.H. 1976); Furrow v. United States Board of Parole, 418 F.Supp. 1309 (D.C. Maine 1976).

deleted by Dist. Judge.

8. Reasonable limitations upon inmates' visitation rights are not violative of the Eighth Amendment. Moody v. Daggett, 429 U.S. 78 (1976); Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977); McCray v. Sullivan, 509 F.2d 1332 (5th Cir. 1975) on remand, 399 F.Supp. 271 (M.D. Ala. 1975).

9. Limitations upon visitation rights as shown in this case were reasonable. (See authorities cited under Conclusion No. 8.)

10. It is not an infliction of cruel and unusual punishment where limitations or deprivations are incident to

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reasonable actions intended to preserve the safety of the inmates at the institution. Gilliard v. Oswald, 552 F.2d 456 (2nd Cir. 1977), rehearing denied, 557 F.2d 359; Crowe v. Leeke, 550 F.2d 184 (4th Cir. 1977).

11. Any limitations or deprivations subsequent to December 19, 1974, were incident to reasonable actions by prison authorities necessitated by their duty to safeguard the inmates in their custody. (See authorities cited in support of Conclusion No. 10.)

12. A state's obligation under the Eighth Amendment is to furnish its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety. Mbody v. Daggett, 429 U.S. 78 (1976); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972); O'Brien v. Moriarity, 489 F.2d 941 (1st Cir. 1974); LaReau v. McDougall, 473 F.2d 974 (2nd Cir. 1972), cert. denied, 404 U.S. 878 (1973); Newman v. Alabam[illegible] 559 F.2d 283 (5th Cir. 1977).

13. Any limitations or deprivations shown by the facts of this case were not of such a nature or of such a duration as to constitute cruel and unusual punishment under the Eighth Amendment and prison authorities acted with reasonable diligence to ameliorate these conditions as soon as possible consonant with safety of inmates and staff. Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972).

14. Plaintiffs have not shown either a violation of the due process clause of the Fourteenth Amendment or the Eighth Amendment prohibition against cruel and unusual punishment. (See authorities cited in support of Conclusions 1, 2, 3, 5, 7, 8, 9, 10, 11, 12 and 13.)

15. Confinement to cells is not per se an imposition

of cruel and unusual punishment. Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972).

16. Where, as here, restrictions and limitations are notpunitive in nature and are applied to a class as a whole and not to particular individuals, any Eighth Amendment concept concerning relation of penalty to offense is inapplicable. Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971), cert. denied, 404 U.S. 1049 (1972), cert. denied, 405 U.S. 978 (1972); Sweet v. South Carolina Department of Corrections, 529 F.2d 854 (4th Cir. 1975).

17. Under the facts of this case any restrictions or limitations were reasonably related to correctional needs. (See authorities cited above.)

It is recommended that the foregoing findings of fact and conclusions of law entered by the Magistrate be adopted and approved by the Court.

DATED: February 2, 1978

OWEN E. WOODRUFF, JR.
United States Magistrate

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APPENDIX

ANALYSIS OF EXHIBITS

Q-167 THROUGH 234

AND

BR-1

Incident Report #	Inmate(s)	Housed	Location of incident	Type of incident
167	Mendrin, B-28545	NS	Hospital	weapon found in cast
168	Calify, B-34913 Krueger, B-9634 Goins, B-43316 Cavanaugh, B-30485 Griffin, B-26484 Spafford, B-24554	NS	Calify's cell	Hit by AB and EME
169	Johnson, B-9361 Ingram, B-20960	B	Bakery	possession of weapon
170	Johns, B-59436 Gibson, A-70582	D	D Section, 5th tier	Gibson stabbed
171	Hill, A-89495	AC	AC	possession of weapon
172	Hayes, B-57982 Morris, B-28342 Germany, B-43134	EB	B Section	possession of weapon
173	Howie, B-48212	AC	AC	Possession of weapon
174	Anderson, B-27456	AC	AC	possession of weapon
175	Lawson, B-40418 Smith, B-56866	EB	EB	possession of weapon and altercation
176	Bell, B-23612	NS	NS	possession of weapon
177	Ballesteros A-56068 Amador, A-90827 Chandler, A-82017	AC	AC Yard	inmates wounded by weapons
178	Miller, B-57739	EH	EH	Suicide
179	Earl, B-50335	AC	AC	possession of weapon
180	Baeza, B-30194 Bonilla, B-39843 Blayjos, B-37071 Lopez, B-50139 Chacon, B-38802 Garcia, B-38366 Juarez, B-25369 Ferrel, B-34052 Shyrock, B-28722 Soto, B-55533 Cavanaugh, B-38045 Spaford, B-24554 Goin, B-43316 Griffin, B-26484 Krueger, B-9634 Perez, B-27364 Elmore, B-47467 Garcia, B-26745 Laran, B-41901 Santistezan, A-84382 Mata, B-33281 Herrera, B-330120 Terflinger, B-18173 Arriaga, B-44415 Sowell, B-34788	NS	NS	destruction of propert by Mexican and AB
181	Sauber, B-14895 Barnes, A-42359	B	B	Barnes Stabbed

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182	Woody, B-15481	NS	NS	possession of weapon
183	McMillen, B-33182 Romero, B-23243	B	B Section Yard	Altercation in yard, Mexican and White
184	Padilla, B-57567 Kent, B-40911	EHU	Rotunda	Altercation
185	Mata, B-23911	AC	Hospital	possession of weapon
186	Cuellar, B-50625 Gordon, B-21846	E	S. Dining Hall	non-injury stabbing by Gordon, racial
187	Parker, B-8684	A Dorm	A Dorm	Escape from Ranch Dorm.
188	Burgener, B-26952	AC	AC	stabbing of two correctional personnel
189	Williams, B-23740 Fennell, A-78292	Ranch	Ranch Dorm.	Williams assaulted by Fennell, racial
190	Coffer, B-37602 unknown	C	N. Dining Hall	Coffer stabbed
191	Gibson, B-5242	AC	AC	Possession of weapon
192	Mitchell, B-45924 Gaulden, B-9053 Pratt, B-40319	NS	Visiting Room	Assault on staff and possession of weapons
193	Vaden, B-22341	SEU	SEU	Possession of weapon
194	Sinamian, B-50262 Wagner, B-48713	EHU	EHU	Possession of weapons
195	Serrato, B-26643	AC	AC	Possession of weapons
196	Rush, B-37196	AC	AC	Possession of weapon
197	Wilson, A-84013	D Sec. SEH	D Sec. SEH	Possession of weapons
198	Crane, B-31488	NS	NS	Possession of weapons
199	Ramirez, B-18001	NS	NS	Possession of weapons
200	Martinez, B-58952	NS	NS	Possession of weapon
201	Ray, A-89822 Johnson, B-48061	B	B	Altercation between black and white
202	Ramirez, B-18001 Cavanaugh, B-30485 Clemente, B-15482	NS	NS	assault on Ramirez AB v. Ramirez
203	Panene, A-90939	AC	AC	Possession of weapon
204	Pinell, A-88401	AC	AC	Possession of weapon
205	Hayes, B-57982 Lawson, B-40418	B	B Sec. Yard	Altercation
206	Kincy, B-57134	E	E	Possession of weapon
207	Burgener, B-26952	AC	AC	Possession of weapon
208	Smith, B-5838 Patterson, B-43138	B	N. Dining Hall	Altercation between two blacks
209	Rush, B-37196	AC	AC	Possession of weapon 6/82

210	Dagnino, B-42404 Cossett, B-27072	B	S. Block Rotunda	Altercation and possession of weapon
211	Sherrill, B-50082 Sanchez, B-52394	C	S. Block Rotunda	Assault on Sherrill
212	Hernandez, B-21530 Delena, B-38935	AC	AC	Possession of weapons
213	Sungate, B-22829	AC	AC	Possession of weapons
214	Jensen, B-49663	AC	AC	Possession of weapon
215	Edwards, B-45171	AC	AC	Possession of weapon
216	Park, A-62080	AC	AC	Possession of weapon
217	Hernandez, B-20074	B	Furniture Factory	Possession of weapon
218	Shryock, B-28722	HS	HS	Possession of weapons
219	Felix, B-21477 Mitchell, B045924 Hayes, B-57982 Dee, B-41198 Gordon, B-21846 Coleman, B-40351 Cole, B-25081 Sherrill, B-50082 Escolta, B-19841 Thompson, B-24470 Kent, B-40911 Ravels, B-24212 Patterson, B-43138 Gray, B-6812 Tyson, B-38664 Varden, B-22341 Melchoir, B-11415 Watkins, B-52949 Dawson, B-53678 Colbert, B-44299 Ford, B-38671 Geary, A-89941 Williams, B-46644 Griffin, B-44709 Johnson, B-52955 Hayes, B-17449 Doyle, B-46135 Waters, B-41900 Johnson, B-38328	B	B	destruction of state property
220	Norwood, B-55366	E	E	possession of weapon
221	Jackson, B-51693	E	Max Shack	Possession of narcotic
222	Miller, B-52311	B	Main Yard	Struggle with staff
223	Anderson, A-27058	E	East Gate	Possession of Narcotic
224	Elmore, B-47467	B	B	Possession of weapons
225	Varden, B-22341	B	B	Possession of weapon
226	Baliol, B-30901	AC	AC	Possession of weapon
227	Doyle, B-46135	B	B	Possession of weapon
228	Romero, B-42844	H		Possession of Marijuan

229	Hill, A-89495	AC	AC	Possession of weapon
230	Gibson, B-5242	AC	AC	Possession of weapon
231	White, A-91330 Vivian, B-18591	B		Breach of security
232	Cooper, B-33250 Divans, B-11396 Justice, B-15185	AC	Between Gates	Assault on Staff
233	Pinali, A-88401	AC	Morrisey Hearing Room	Assault on non-prison
234	Kelly, B-42678	B	B	Possession of weapon

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APPENDIX

ANALYSIS OF EXHIBIT BP

December, 1974.

DATE	NUMBER OF VISITS	LEGAL VISIT	SPECIAL VISIT
12/1/74	160	2	0
12/2/74	73	9	0
12/3/74	MISSING		
12/4/74	MISSING		
12/5/74	105	16	0
12/6/74	82	13	1
12/7/74	154	0	0
12/8/74	164	0	0
12/9/74	87	8	0
12/10/74	MISSING		
12/11/74	MISSING		
12/12/74	89	6	3
12/13/74	82	13	0
12/14/74	149	0	1
12/15/74	166	3	2
12/16/74	165	18	1
12/17/74	MISSING		
12/18/74	MISSING		
12/19/74	90	9	1
12/20/74	12	11	1
12/21/74	4	2	2
12/22/74	3	1	2
12/23/74	20	18	2
12/24/74	MISSING		
12/25/74	MISSING		
12/26/74	7	7	0
12/27/74	MISSING		
12/28/74	4	4	0
12/29/74	234	0	1
12/30/74	13	13	0
12/31/74	MISSING		

January, 1975

DATE	NUMBER OF VISITS	LEGAL VISIT	SPECIAL VISIT
1/1/75	204	1	0
1/2/75	5	3	0
1/3/75	10	10	0
1/4/75	2	2	0
1/5/75	244	0	4 (3 Hosp/1 In
1/6/75	15	10	4 Inter.
1/7/75	MISSING		
1/8/75	MISSING		
1/9/75	119	6	4 (1 Hosp/1 In
1/10/75	6	3	3 Inter.
1/11/75	7	5	1 Inter.
1/12/75	241	0	0
1/13/75	114	5	3 Inter.
1/14/75	11	7	3 Inter.
1/15/75	2	2	0
1/16/75	14	6	8 Inter.
1/17/75	14	8	6 Inter.
1/18/75	170	0	0
1/19/75	236	0	4 Inter.
1/20/75	97	5	1 Inter.
1/21/75	21	10	10 Inter.
1/22/75	MISSING		
1/23/75	11	5	6 Inter.
1/24/75	11	3	8 Inter.
1/25/75	162	1	1
1/26/75	179	0	0
1/27/75	MISSING		
1/28/75	18	15	3 Inter.
1/29/75	6	1	5 Inter.
1/30/75	13	13	0
1/31/75	10	10	0

February, 1975

DATE	NUMBER OF VISITS	LEGAL VISIT	SPECIAL VISIT
2/1/75	147	0	0
2/2/75	218	0	0
2/3/75	127	4	0
2/4/75	12	5	0
2/5/75	14	5	0
2/6/75	6	5	0
2/7/75	13	8	0
2/8/75	205	1	1
2/9/75	196	0	1
2/10/75	112	1	2
2/11/75	17	14	0
2/12/75	13	7	0
2/13/75	8	8	0
2/14/75	11	9	0
2/15/75	202	0	0
2/16/75	200	0	1
2/17/75	178	0	0
2/18/75	13	13	0
2/19/75	12	12	0
2/20/75	18	17	0
2/21/75	13	6	0
2/22/75	187	0	2
2/23/75	204	1	1
2/24/75	143	4	2
2/25/75	MISSING		
2/26/75	MISSING		
2/27/75	123	0	0
2/28/75	MISSING		

APPENDIX

ANALYSIS OF EXHIBIT BR

EAST BLOCK

December 1974

	Socks	T.S.	S.H.	T.	S.	P.C.	B.S.	P.
12-17-74	88	170	134	134				
12-19-74	60	85	100	100			65	61

Legend: T.S. = Tee shirts
S.H. = Shorts
T. = Towels
S. = Sheets
P.C. = Pillow cases
B.S. = Blue shirts
P. = Pants

EAST BLOCK

January 1975

	Socks	T.S.	S.H.	T.	S.	P.C.	B.S.	P.
1-6-75	#6	52	57	46				
1-7-75							82	82
1-8-75					725	206		
1-10-75					530	220		
1-13-75	#0	169	207	119			190	135
1-14-74			137					
1-15-75	#11	40	98	74				
1-17-75	#0	92	115	100	419	203	101	98
1-20-75	#0	113	213	99				
1-22-75	#12	80	101	104	581	204	95	100
1-28-75	#6	56	55	59				

Legend: T.S. = Tee shirts
S.H. = Shorts
T. = Towels
S. = Sheets
P.C. = Pillow cases
B.S. = Blue shirts
P. = Pants

EAST BLOCK

February 1975

	Socks	T.S.	S.H.	T.	S.	P.C.	B.S.	P.
2-2-75	00	40	45	67			66	76
2-5-75	00	97	118	135	525	185		
2-7-75	00	98	104	297			7	15
2-10-75	00	99	142	164			60	80
2-13-75	00	74	81	131			74	78
2-14-75					470	168		
2-18-75	00	114	135	159			33	36
2-19-75					525	200		
2-21-75	00	100	135	173	300	105	92	92
2-24-75	00	92	126	152			46	68
2-26-75	09	66	119	210	275	110		
2-28-75	010	66	116	147	350	133	28	53

Legend: T.S. = Tee shirts
S.H. = Shorts
T. = Towels
S. = Sheets
P.C. = Pillow cases
B.S. = Blue shirts
P. = Pants

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